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ABSTRACT

Three conference papers on school finance reform in Tennessee are presented in this document, with a focus on the disparities between rural and urban public school funding. The first paper examines the nature and size of contributions of various funding sources to the per-pupil revenue in local school districts, analyzes specific problems of the Tennessee Foundation Program (TFP), and investigates state categorical support. The second paper presents an overview of state legislation challenging the TFP's constitutionality. The declaratory judgment handed down in "Tennessee Small School Systems v. McWherter" (1978) held that Tennessee school funding was not uniform and was therefore in violation of the equal protection provisions in the state constitution. The third paper determines the extent to which the TFP equalized funding for all districts and concludes that none of the 1979 Tennessee School Finance Equity Study's recommendations have been implemented. Problems of the TFP included inadequate appropriations, inadequate state funding, and failure to keep up with inflation. References and tables are included with each article. (LMI)

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Country v. Town: School Finance Reform in Tennessee

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Country Against Town:

Funding Education in Tennessee

by

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Abstract

In Tennessee, a major change in the educational funding formula occurred in 1977 when the "Tennessee Foundation Program" (TFP) was established. Presently, equity in rural districts has generated a legal dispute and is a major educational reform issue; therefore, it is the purpose of this paper to explore the funding of education in Tennessee. Specifically, the paper examines the nature and size of contributions of various funding sources to the per-pupil revenues in local school districts, analyzes specific problems with the Tennessee Foundation Program (TFP) using selected horizontal equity measurements as a means of evaluation, and investigates state categorical support in Tennessee.

School districts rely on two primary sources of revenue: state and local sales taxes and local property taxes. In general, approximately 45% of total school funding comes from state sources, about 45% from local sources, and the balance from federal sources. The state's TFP share is 92.5% and the local share is 7.5%. Of the money from local sources about 45% comes from property taxes and 37% from local sales taxes, and the remaining 18% from other local revenue sources. Subsequently, this strong dependence on local sources of school finance creates gross disparities, with a disproportionate number of rural districts unable to generate sufficient local revenue to fund educational programs.

The principle of horizontal equity states that students who are alike should receive equal shares. Using three measures of horizontal equity (range, restricted range, and federal range ratio) on five selected per pupil allocations (state TFP contribution, total expenditures, local property taxes, total local revenue, and local sales taxes) for 1989-90, disparities ranged from 17% to 1053%.

Also, state categorical aid for transportation and capital outlay creates monetary problems for local school districts. In 1989-90, local districts funded almost 77% of the total expenditures for transportation, and over 84% of the total expenditures for capital outlay.

Country Against Town:

Funding Education in Tennessee

Ever since the industrial revolution in the late nineteenth century, wealth has been condensed in urban areas. Hence, the concentration of wealth and affluence in the cities created job opportunities that attracted people from the surrounding countryside. As a result, over the past hundred years the proportion of citizens residing in rural areas has dwindled. However, for a number of decades the relative impoverishment of rural Americans was at least partially offset by the maintenance of various nineteenth century political structures that preserved political power for the declining rural population and enabled them to appropriate urban wealth to fund such very expensive public undertakings as the building and maintenance of infrastructure, and the conduct of public education. In 1962 however, **Baker v. Carr** (1962), the Supreme Court's "one man, one vote" ruling, cleared the way for the urbanization of political power as well. The resulting reapportionments have left rural areas impoverished, underpopulated, relatively powerless, and dependent in an almost colonial way on their local urban centers. Study of the funding for public K-12 education in Tennessee reveals a paradigm case of this trend toward urbanization. The overall purpose of this paper is to explore the funding of education in Tennessee. Specificially, the paper examines current school funding by describing the nature and size of contributions of various funding sources to the per-pupil revenues in local school districts, analyzes specific problems with the Tennessee Foundation Program

(TFP) using selected horizontal equity measurements as a means of evaluation, and investigates the extent of state categorical support in Tennessee.

Evolution of School Funding

From an historical perspective, as early as 1909 the Tennessee General Assembly found it necessary to "equalize," in the modern sense of the term, educational appropriations. Minimum school programs for grades 1-8 were funded on an equalization basis in 1925, with Tennessee's first comprehensive twelve grade minimum foundation program established in 1947. Eight years later in 1955, the General Assembly adopted an "index of taxpaying ability" in which economic factors (motor vehicle registrations, percent of farm products sold, percent of employed workers, and percent of state sales tax collections) replaced assessed valuations and estimated valuations in determining the relative tax paying ability of each of the 95 counties. In 1972, the General Assembly required the State Board of Education to provide special education services sufficient to meet the needs of handicapped children, and then in 1973, to provide comprehensive vocational and technical education in grades 9-12. Ultimately, in 1977 a major change in the educational funding formula occurred, when the "Tennessee Foundation Program" (TFP) was established in which a pupil-based, program-oriented cost differential procedure for measuring needs and costs in state funding of the K-12 public schools replaced the former, largely teacher unit procedure. Subsequently, in 1988 a coalition of Tennessee Small School Systems (TSSS), filed a lawsuit against the state of Tennessee seeking declaratory judgment that state K-12 school funding is inequitable under the Education and

Equal Protection clauses of the State Constitution (Tennessee Small School Systems v. McWherter, 1988). In July 1991, a ruling in favor of TSSS was rendered, and the Legislature assigned responsibility for reforming school finance before June 30, 1992. In response, the state filed an appeal in November 1991. At the present time, education reform, school finance remedies, and tax reform are issues receiving attention from legislators and citizens across the state. Notwithstanding the potential reforms, the existing school funding structure that precipitated the unsettled litigation deserves analysis.

Current School Funding

In short, the existing Tennessee Foundation Program (TFP) formula allocates state money to local school districts by summing funds for three groups of students: regular academic, vocational education, and identified and served handicapped. The funding for each group is calculated by multiplying the full-time equivalent average daily attendance (FTEADA) for each program by its corresponding cost differential to obtain a weighted full-time equivalent average daily attendance (WFTEADA). Then, the WFTEADA is multiplied by the base amount ($569.76 per student for1991-92) set annually by the State Board of Education. Finally, to obtain the districts total TFP funds the result (WFTEADA multiplied by the base) is then multiplied by the district's training and experience factor. After the TFP funds are calculated the state provides 92.5% and local districts contribute 7.5% collectively (Tennessee Code Annotated, 1991, §49-3-306).

Now, with knowledge of the essential components of the TFP funding structure, analysis of how the state of Tennessee funds its activities is appropriate.

The Tennessee State Tax Structure

If the courts demolished one nineteenth century holdover favoring rural areas with their "one man, one vote" ruling, nothing has been done to remedy a second nineteenth century holdover that punishes rural areas -- the state tax structure.

Income Taxes. Currently, the state only levies an income tax on earnings from stocks and bonds held outside the state. However, during the past year the governor has twice attempted to have legislators pass a state income tax for the primary purpose of funding education reform, but both times his proposals were overwhelmingly defeated. Therefore, the state relies almost entirely on sales tax revenues to fund all state activities.

Sales Taxes. At the present time, the state sales tax rate is 5.50%, and the maximum local sales tax option is set at half the state rate (2.75%). At least one-half of the local option sales tax revenue is required to go to education. These local sales tax revenues are returned to the taxing-district of origin without regard to ADA, local revenue generating ability, or educational need. As a result, inequities frequently occur between districts since some districts generate more sales tax revenue than others. For instance, when individuals living in rural areas travel to urban areas to shop, the local option sales tax on their purchases benefits the urban school district where they are shopping, not their own school district. Since rural populations have little choice other than to purchase many

items outside of their own district, gross inequities in rural school district's ability to generate local funds are created.

Property Taxes. Another source of revenue to fund education is local property taxes. The categories of property assessment are uniform across the state (residential at 25%, commercial at 40%, and utility at 55%), and property tax rates, expressed in dollars per $100 of assessed valuation, are set by the county and city governing bodies. The administration of the assessments differs by county, however, with some districts having more precise, current property assessments than others, a factor not considered in the attempt to equalize across districts (See **Funding Education in Tennessee: The Local Portion**, below). In addition, local boards of education do not have the option of a separate property tax levy to augment other distributions.

Distribution of Sales and Property Tax Proceeds to School Districts. Revenue collected by the county for educational purposes must be distributed on the basis of ADA to each school district within the county. For example, a growing county district needing funds for capital projects must share these funds with other districts in the county, thus requiring the county district to collect more money than is needed for its capital projects. Although the counties need not share taxes if collected only on property outside the city or special school districts[1] few districts elect to use this approach since most of the commercial and

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[1]In Tennessee special school districts are created by private acts of the legislature enabling a group of citizens in a county to vote in the majority for the establishment of a school district that disregards city boundaries. There are 14 special school districts, most in rural county areas that may contain a small city. Although county and city school districts are not fiscally independent, special school districts may petition directly to the legislature for tax rate increases beyond those set in the act establishing the district.

industrial tax base is within city boundaries. City and special school districts may elect to raise taxes in their districts without having to share the proceeds with other districts in the county. The result of this unusual system of distributing funds is to provide city and special school districts in a particular county with more revenue per pupil than is available to the county district. Hence, there is essentially no legal limit to the amount of local funds that can be generated for education, and the distribution of local funds produces much of the disparity that exists between city, county, and special school districts.

Funding to Meet Educational Needs

One of the primary questions under consideration by the court and legislature is whether the current funding structure (TFP) meets the educational needs of students in every area of the state. In response to this question, a summary of the total funding for K-12 education in Tennessee for 1989-90 (the most recent fiscal data available) is summarized in Table 1. Analysis of the data

Table 1

Total Revenue for Public K-12 Education in Tennessee, Fiscal 1989-90

Revenue From:		
State Sources	$ 1,137,762,835	44.5%
Local Sources	1,175,667,534	45.9%
Federal Sources	246,457,166	9.6%
Total	$ 2,559,887,535	100.0%

Source: State of Tennessee, 1991. Page 21

reveals that state and local contributions are almost equal. Furthermore, if the local contribution is funding such a substantial portion of the total cost of public education, is it possible to equitably distribute the burden among urban and rural school districts? The answer to this question is found in an examination of the funding of state and local portions of the TFP.

Funding Education in Tennessee: The State Portion. Of the money from state sources, the most important part is that from the Tennessee Foundation Program (TFP). The state's share is 92.5% and the local share is 7.5% of the state aggregate TFP. Methods employed to calculate the amount of state contribution is found in Tennessee Code Annotated (1991) §49-3-308. Table 2 provides detailed data concerning the amount and purpose of the state contribution. As Tables 1 and 2 illustrate, the TFP allocation (73.3% of the state contribution), is only 32.6% ($833,832,832/$2,559,887,535) of the total revenue expended for public education.

Table 2

Analysis of Revenue from State Sources for K-12 Education, Fiscal 1989-90

Tennessee Foundation Program (TFP)		$ 833,832,832		73.3%
Categorical Appropriations for:				
Capital Outlay . .	$ 11,778,277		1.0%	
Transportation	20,899,102		1.8%	
Other	257,613,141	290,290,620	22.7%	25.5%
Other		13,639,383		1.2%
Total		$ 1,137,762,835		100.0%

Source: State of Tennessee, 1991. Pages 119-123 and 124-28.

Funding Education in Tennessee: The Local Portion. The determination of an individual district's required share of the state-wide TFP (7.5% collectively) is the product of the local district tax paying ability (expressed as a percentage) and the total state TFP. Local tax paying ability is determined, according to state law (Tennessee Code Annotated, 1991, 49-3-307), by dividing the adjusted county property value by the adjusted state property value. Adjusted county property value is the sum of total assessed valuation of real property and equalized public utility assessed value. Real property values are equalized by applying a yearly appraisal ratio determined by the state board of equalization, and the TFP makes an attempt to equalize property values among districts. Also, of particular importance to an investigation into equity is the share of the local contribution provided by local option sales taxes. Table 3 represents the major sources of the local contribution to the funding of public K-12 education. Examination of Table 3 reveals that statewide, over 37% of local revenue for education is derived from local option sales tax. However, as discussed earlier,

Table 3

Analysis of Revenue from Local Sources for Public K-12 Education, Fiscal 1989-90

Local Taxes:		
Property Taxes	$ 522,229,282	44.4%
Sales Taxes	436,919,231	37.2%
Other Local Revenues	186,519,021	18.4%
Total	$1,175,667,534	100.0%

Source: State of Tennessee, 1991. Pages 139-143 and 144-48

one must remain cognizant of the fact that urban areas with large shopping malls generate a far greater proportion of local option sales tax revenue than can rural areas that lack such amenities.

In addition, it is important to be aware of the fact that although some equalization of property values across counties is used to determine a district's share of the TFP, the amount of other taxes that can be generated locally is ignored. For counties with more than one school district, each district bears its share of the county's contribution to the foundation program based on proportional ADA weighted by program. Also, Green & Schneider (1990) assert that since farm land values have declined over the past decade, rural school districts have had to spend more on education from a position of economic weakness. Rural school districts in Tennessee certainly qualify for this position.

Problems with the Tennessee Foundation Program

The existing Tennessee Foundation Program (TFP) is fraught with equity and funding problems. In particular, anaylsis of inadequate appropriations made by the General Assembly and insufficient state funding are explored in an accompanying paper by Meyers, Hirth, & Valesky (1992a). Here, the wide disparity in horizontal equity is a prominent funding problem that requires immediate attention.

Horizontal Equity of the Tennessee Foundation Program

The principle of horizontal equity states that students who are alike should receive equal shares. Although it is acknowledged that all students are not alike

across the state, it is common that for purposes of equity analysis, that all students in a state are treated as being equal. Horizontal equity is assessed by measuring the dispersion, or inequality, in the distribution of such things as expenditures or revenues per pupil, resources for the basic education program, pupil-teacher ratio, mastery of basic competency levels, or contribution by schooling to long-term outcomes such as income or status in life. No dispersion in the distribution of objects indicates perfect equity (Berne & Stiefel, 1984, p. 13). Three measures of horizontal equity; the range, restricted range, and federal range ratio are utilized in this analysis. Table 4 presents the results of these three measures of horizontal equity for five selected per pupil allocations (state TFP contribution, total expenditures, local property taxes, total local revenue, and local sales tax) for 1989-90. In brief, the **range** is defined as the difference between the ultimate extreme values in the list of per pupil allocations when the list is arrayed from the lowest value to the highest value. The **restricted range** is the difference between the value in the array at the 95th percentile and the value in the array at the fifth percentile. The **federal range ratio** develops a factor which expresses in a standard way the difference between the upper value in the restricted range to the lower value. For the purpose of comparison, federal range ratios are readily converted to percentages. For example, referring to Table 4, Column 4, the federal range ratio for Per Pupil Total Local Revenue is 2.552 which means that the upper value in the restricted range is 255.2% greater than the lower value in the restricted range.

Continuing with **Table 4, Column 4**, look at the values arrayed in **Appendix A** to locate the range and restricted range values used in the table. Although

Table 4

Range, Restricted Range, and Federal Range Ratio based on Selected Per Pupil Allocations for the Academic Year 1989-90

	Academic Year 1989-90 Per Pupil				
	State TFP Contribution (1)	Total Expenditures (2)	Local Property Taxes (3)	Total Local Revenue (4)	Local Sales Taxes (5)
Range*					
$1,540 - $968 =	$572				
$5,164 - $2,415 =		$2,749			
$2,055 - $135 =			$1,920		
$3,229 - $536 =				$2,693	
$1,600 - $37 =					$1,563
Restricted Range**					
$1,198 - $1,027 =	$171				
$4,568 - $2,809 =		$1,759			
$1008 - $337=			$ 671		
$2,586 - $728 =				$1,858	
$1,351 - $119 =					$1,232
Federal Range Ratio					
$171 / $1,027 =	.167				
$1,759 / $2,809 =		.626			
$671 / $337 =			1.991		
$1,858 / $728 =				2.552	
$1,232 / $119 =					10.530

Notes:

* For Range considerations Carroll County School District and Gibson Country School District are omitted. Both exist by law, but have no students because all students in each county are served by city and special school districts

** Restricted Range computations take the per pupil allocation at the 5% and 95% point in the array sorted in ascending order to avoid the eccentricities that may occur in the numbers at the ultimate extremes of the array. The 5% and 95% points used in this presentation are based on the cumulative pupil ADA. (Total ADA in Tennessee for 1990 = 761,763; 5% of 761,763 = 38,088; 95% of 761,763 = 723,675)

Sources: State of Tennessee, 1991. Pages 120-23, 139-144, 230-34, and Appendix A

Appendices for the other per pupil allocations reported in Table 4 are not included, the method used to tabulate the statistical data was the same, and interested parties may contact the authors for the supporting arrays. The Table in Appendix A lists school districts in ascending order by **Per Pupil Total Local**

Revenue for the scholastic year 1989-90. The federal range ratio showing the upper value in this restricted range to be 255.2% greater than the lower value, indicates a disparity rate 56% greater than that of local property taxes (column 3), and about 15 times the disparity rate of the TFP distribution shown in Column 1.

In addition, Appendix A reveals that the mean per pupil total local current revenue for all districts was $1,543 in 1989-90, and that 18 of the 32 city districts (56%) had total local revenue contributions above the mean, while only ten of 95 county districts (11%) and one of 14 special school districts (7%) were above the mean. For the most part, it is evident that larger districts are able to generate the most local revenue. Examination of ADA figures indicate that in 1989-90 roughly half (70) of the 141 districts had fewer than 3,000 students. However, those smaller districts and the county districts with high per pupil total local revenues are generally in areas that have a large city and large tax base, have a major industrial or commercial base, or are located in an area that attracts a large numbers of tourists.

In summary, Appendix A demonstrates that there is great disparity in the amount of total local current revenue generated per pupil. It is important to emphasize the fact that the TFP uses only property values as the criterion to determine each county's share of the TFP. The TFP formula does not consider sales tax and other local revenue sources to determine the required local contribution. Therefore, much of the disparity that is obvious in Appendix A, then, is not equalized in the TFP.

Progressing with **Table 4, Column 1**, the three equity measures for the current **Per Pupil Tennessee Foundation Program (TFP) Revenues** are disclosed.

Since TFP funds are allocated by a strict formula by the state, the variation in the array must be accounted for in terms of student and program mix at each of the local education agencies. Because of the formulaic allocation, these funds are, by definition, equitable, and the 16.7% disparity may stand as a criterion of equitability in looking at other arrays that may not be so equitably distributed. Moving toward the right across Table 4, each new column shows a distribution that is less equitable than that in the column to its left.

In **Table 4, Column 2**, the equity statistics for **Per Pupil Total Current Expenditures** are presented. The highest value in this restricted range is 62.6% greater than the lowest value, or about four times less equitable than the TFP array sets as a standard. The source of Total Current Expenditures is found in both state and local revenue.

Likewise, **Table 4, Column 3**, shows equity statistics on **Per Pupil Local Property Tax Revenues**. Property taxes are supposedly equalized in Tennessee, but the restricted range as translated into the federal range ratio shows that the upper value in the array is 199.1% greater than the lower value, or more than 12 times the disparity rate of the TFP criterion.

Equity statistics for **Per Pupil Current Local Sales Tax Revenues** appear in **Table 4, Column 5**. The federal range ratio for this column shows the disparity of the upper value in the array over the lower to be 1053%, more than four times the disparity of Total Local Revenues, and more than 63 times the disparity rate of the benchmark TFP disparity rate. Certainly, these statistics indicate that Tennessee does not treat equal children equally.

Another Source of Funding Inequity -- State Categorical Support

In addition to equity problems created by the basic TFP formula, limited state categorical support, especially in the area of transportation and capital outlay, produce other funding difficulties. For example, categorical aid to school districts for 1989-90 was almost 26% of the total support received from the state (See Table 2). Activities not included in the TFP for which districts receive categorical aid based primarily on ADA from the preceding school year include: capital outlay, transportation, textbooks, driver education, substitute teachers, and elementary guidance counselors. Of these, the greatest monetary problems for local districts are caused by transportation and capital outlay. Table 5 shows the total local expenditures for transportation and capital outlay, and the rate of state contribution. Examination of Table 5 reveals that the majority of the costs for transportation and capital outlay are assumed by the local districts. It is evident that those amounts borne by the state do little to equalize the financial burden since the amounts are small and provided mostly on an ADA basis. Of state transportation funds, however, 40% are apportioned on a ratio of the geographical area of each county to the total state area in square miles (Tennessee Code Annotated, 1991, §49-3-309). This minimal apportionment is the only use of a sparcity concept in Tennessee's funding of education. Therefore, only $8,359,641 (40% of $20,899,102) or 0.73% of all state support in 1989-90 was based on sparcity. Moreover, the percentage of the state's share based on sparcity has decreased steadily over time (e.g., 1987-88 = .84%, 1988-89 = .77%, and 1989-90 = .73%).

Table 5

Local and State Support for Transportation and Capital Outlay in 1989-90

	Transportation		Capital Outlay	
Total Expenditures	$ 88,758,584	100.0%	$ 74,365,537	100.0%
Less, State Subsidies	(20,899,102)	(23.5%)	(11,778,277)	(15.8%)
Amount Funded Locally	$ 67,859,482	76.5%	$ 62,587,260	84.2%

Source: State of Tennessee, 1991. Pages 119-128, 215-19, and 230-34

Therefore, it is apparent that school districts not only suffer inequities originating from the basic TFP formula, but are also shortchanged in the allocation of state categorical support.

Current State of Affairs

The inequities in school funding explored in this paper were the foundation of a lawsuit filed by a coalition of Tennessee Small School Districts (TSSS) in 1988. A complete discussion of the facts of the case, the ruling, and pending appeal is given by Meyers, Hirth, and Valesky (1992b) in a supporting paper. An education reform bill and a one-half cent increase in state sales tax have just been passed at the time of writing. The 1990-91 school year data are not yet available, and the 1991-92 school year not complete to include in the data analysis; however, these authors hypothesize that when these data are available analysis of horizontal equity statistics will indicate further deterioration. Undoubtedly, Tennessee school children are in desperate need of equal treatment across districts. Indeed, today the quality of a student's education is a function of the wealth of his/her

parents and the geographic area where he/she lives. Although the education reform bill includes a new funding formula, sweeping changes and drastic improvement are not forthcoming; stop-gap funding provided by an increase in state sales tax will provide some financial relief for the next school year. In conclusion, although school finance reform in Tennessee is compulsory, the future of funding education in Tennessee remains debatable.

Appendix

Appendix A: Tennessee School Districts Ranked in Ascending Order by Total Local Current Revenue per Pupil for 1989-90.

Appendix A

Tennessee School Districts Ranked in Ascending Order By Total Local Current Revenue Per Pupil for 1989-90

District	District Type (2)	1990 ADA	1989-90 Local Revenue Total	1989-90 Local Revenue Per Pupil
Gibson	SSD	0	0	0
Carroll	County	0	1,006,055	0
Lewis	County	1,656	887,814	536
Chester	County	2,045	1,127,422	551
Lauderdale	County	4,654	2,622,108	563
Grainger	County	2,756	1,581,439	574
Henderson	County	3,124	1,915,996	613
Cannon	County	1,699	1,051,811	619
Dayton	City	618	389,141	630
Bledsoe	County	1,468	936,886	638
Pickett	County	739	478,383	647
Macon	County	2,666	1,729,170	649
Fayette	County	4,432	2,924,086	660
Decatur	County	1,777	1,175,165	661
Dekalb	County	2,405	1,612,379	670
Wayne	County	2,429	1,663,319	685
Grundy	County	2,423	1,700,564	702
Union	County	2,142	1,550,109	724
Hancock	County	1,126	818,939	727
Perry	County	1,030	749,745	728
5% of ADA				
Hardeman	County	4,603	3,396,858	738
Lake	County	1,054	780,523	741
Morgan	County	3,111	2,311,252	743
Campbell	County	5,999	4,467,864	745
Bradford	SSD	711	530,897	747
Trousdale	County	1,048	784,758	749
Bells	City	285	214,889	754
Scott	County	2,318	1,849,773	798
Lincoln	County	3,838	3,063,930	798
Tipton	County	6,409	5,132,405	801
Oneida	SSD	1,099	886,060	806
Haywood	County	4,062	3,325,774	819
McNairy	County	3,847	3,176,806	826
Monroe	County	4,217	3,485,561	827
White	County	3,283	2,726,746	831
Overton	County	2,821	2,390,932	848
Cocke	County	4,107	3,517,196	856
Alamo	City	474	407,942	861
Stewart	County	1,466	1,269,146	866
Putnam (1)	County	7,962	6,896,896	867
Wilson	County	9,355	8,377,964	896
Franklin	County	5,499	4,968,228	903
Jefferson	County	5,003	4,550,237	910
Carter	County	5,652	5,146,374	911
Humboldt	City	2,206	2,040,570	925

Appendix A (continued)

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Appendix A - - continued

District	District Type (2)	1990 ADA	1989-90 Local Revenue Total	1989-90 Local Revenue Per Pupil
Lexington	City	747	693,524	928
Rhea	County	3,571	3,324,471	931
Houston	County	1,227	1,142,534	931
Crockett	County	1,467	1,373,544	936
Lawrence	County	5,850	5,477,890	936
Sweetwater	City	1,110	1,039,823	937
Meigs	County	1,385	1,304,792	942
Covington	City	976	921,577	944
Hickman	County	2,597	2,463,062	948
McKenzie	SSD	1,286	1,221,434	951
Clay	County	1,259	1,201,739	955
Milan	SSD	1,875	1,796,257	958
Johnson	County	2,092	2,046,380	978
Dickson	County	6,332	6,246,126	986
Cheatham	County	4,823	4,798,007	995
Hardin	County	3,678	3,661,971	996
Fentress	County	2,138	2,129,250	996
Marion	County	4,273	4,260,970	997
Jackson	County	1,326	1,323,559	998
South Carroll	SSD	346	345,938	1,000
Richard City	SSD	194	197,226	1,017
Henry	County	3,211	3,276,868	1,021
Unicoi	County	2,525	2,585,390	1,024
Roane	County	5,419	5,557,249	1,026
Weakley	County	4,824	4,966,100	1,029
Etowah	City	381	393,474	1,033
Warren	County	5,628	5,852,223	1,040
Greene	County	6,043	6,424,447	1,063
Smith	County	2,489	2,655,040	1,067
Bedford	County	5,119	5,523,158	1,079
Claiborne	County	4,321	4,681,634	1,083
Polk	County	2,243	2,437,694	1,087
Humphreys	County	2,792	3,068,140	1,099
West Carroll	SSD	1,022	1,124,533	1,100
Harriman	City	1,737	1,931,172	1,112
Cumberland	County	5,388	6,002,848	1,114
Hawkins	County	6,442	7,246,185	1,125
Newport	City	734	830,610	1,132
Bradley	County	8,209	9,293,999	1,132
Gibson	County	1,847	2,121,337	1,149
Huntingdon	SSD	1,348	1,565,251	1,161
Robertson	County	7,223	8,410,925	1,164
Trenton	SSD	1,258	1,473,051	1,171
Rogersville	City	473	560,107	1,184
Loudon	County	3,511	4,181,449	1,191
Obion	County	3,924	4,688,944	1,195
Benton	County	2,332	2,811,358	1,206
Sequatchie	County	1,508	1,820,555	1,207
Washington (1)	County	7,917	9,591,004	1,211
McMinn	County	5,201	6,311,669	1,214

Appendix A (continued)

Appendix A -- continued

District	District Type (2)	1990 ADA	1989-90 Local Revenue Total	1989-90 Local Revenue Per Pupil
Fayetteville	City	868	1,055,133	1,216
H.R. Bruceton	SSD	725	882,252	1,217
Giles	County	4,204	5,155,484	1,226
Blount (1)	County	8,696	10,838,267	1,246
Dyer	County	3,068	4,023,008	1,311
Montgomery	County	15,026	19,883,948	1,323
Maury (1)	County	9,133	12,130,378	1,328
Sumner	County	18,266	24,385,422	1,335
Shelby (1)	County	34,092	47,125,994	1,382
Marshall	County	3,732	5,261,281	1,410
Coffee	County	3,125	4,449,292	1,424
Jackson	City	5,904	8,447,496	1,431
Clinton	City	1,055	1,518,495	1,439
Moore	County	886	1,277,692	1,442
Lebanon	SSD	2,246	3,265,901	1,454
Rutherford	County	16,343	23,849,750	1,459
Anderson	County	5,963	9,140,101	1,533
Paris	SSD	1,149	1,896,949	1,651
Williamson	County	10,548	17,434,005	1,653
Hamblen	County	8,134	13,522,097	1,662
Union City	City	1,888	3,143,503	1,665
Lenoir	City	1,636	2,755,556	1,684
Athens	City	1,686	2,934,962	1,741
Van Buren	County	693	1,207,930	1,743
Hamilton (1)	County	20,791	36,342,171	1,748
Sevier (1)	County	8,310	15,157,111	1,824
Maryville	City	3,152	5,766,546	1,829
Memphis	City	96,970	177,462,230	1,830
Cleveland	City	3,923	7,241,877	1,846
Elizabethton	City	2,176	4,142,702	1,904
Dyersburg	City	3,120	5,953,263	1,908
Manchester	City	1,067	2,113,796	1,981
Murfreesboro	City	4,074	8,129,100	1,995
Knox (1)	County	46,519	99,614,180	2,141
Chattanooga	City	19,510	42,083,604	2,157
Greeneville	City	2,453	5,353,553	2,182
Sullivan (1)	County	14,121	31,538,779	2,233
Tullahoma	City	2,899	6,825,291	2,354
Johnson City	City	5,215	12,471,378	2,391
Madison	County	6,880	16,475,024	2,395
Franklin	County	3,181	7,647,077	2,404
Davidson (1)	County	61,581	159,239,959	2,586
95% of ADA				
Bristol	City	3,330	9,339,343	2,805
Alcoa	City	1,308	3,774,465	2,886
Oak Ridge	City	4,158	12,159,844	2,924
Kingsport	City	4,731	15,275,746	3,229

Appendix A (continued)

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Appendix A -- continued

District	District Type (2)	1990 ADA	1989-90 Local Revenue Total	1989-90 Local Revenue Per Pupil
Total		761,763	$1,175,667,534	
Mean				$1,543
Median				$1,033
n=		141		

(1) Only ten of the 95 counties have a per-pupil local option sales tax base above the average for all 95 counties of $ 26,413 (Green & Gregory, 1990, p. 36). Those fortunate ten are indicated in this table.

(2) The abbreviation SSD in the "District Type" column indicates "Special School District."

Sources: State of Tennessee, 1991. Pages 65-9, 139-143, and144-48.

... To establish and maintain a uniform system of public education

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Abstract

On July 8, 1988, a lawsuit filed against the state by the Tennessee Small School Systems (TSSS) charged that because of inequities in funding the state has failed to provide equal protection of the law to small rural districts, and asked the court to declare the Tennessee Foundation Program (TFP) unconstitutional, to enjoin defendants from acting under the current TFP statutes, and to require that a constitutional education finance system be enacted by the legislature. Trial began on October 29, 1990, and testimony was completed on December 6, 1990.

Testimony in the case showed that many rural schools have curricula that do not meet state standards, inadequate library facilities, and dilapitated physical plant. In its decision the court took note of this testimony and its consequences:

> The evidence indicates a direct correlation between dollars expended and the quality of education a student receives. In the ten richest districts for the school year 1988-89, 60% of the elementary schools and 77% of the secondary schools were accredited [by the Southern Association of Colleges and Schools] compared to 7% and 40% among the ten poorest districts. ... Because of lack of fiscal capacity there is little that the poor school districts can do to offset the differences.

Declaratory judgment was handed down by the trial court on July 25, 1991 in **Tennessee Small School Systems v. McWherter** (1988) holding that Tennessee school funding was not *uniform*, and was, therefore, in violation of the "equal protection" provisions in the Tennessee constitution. After a second hearing an order was filed on September 13, 1991, calling on the Legislature to meet its constitutional obligation by reforming school finance before June 30, 1992. Appeal was filed by the state in November of 1991 with the Court of Appeals although TSSS has petitioned the Supreme Court to hear the case directly. Hearings have not been scheduled nor has the order of the chancery court as yet been stayed pending the outcome of the appeal.

...To establish and maintain a uniform system of public education

On July 8, 1988, a lawsuit filed against the state by the Tennessee Small School Systems (TSSS) charged that because of inequities in funding the state has failed to provide equal protection of the law to small rural districts, and asked the court to declare the TFP unconstitutional, to enjoin defendants from acting under the current TFP statutes, and to require that a constitutional education finance system be enacted by the legislature.

The Plaintiffs

The districts that are members of the Tennessee Small School Systems (TSSS) are listed in Appendix B. Table 1 provides a breakdown of all the 141 school districts in Tennessee by local unit type and by membership in the TSSS.

Table 1

Analysis of All Tennessee School Districts Showing Type and TSSS Membership

	Number of Districts by Type							
TSSS	County		City		SSD		Total	
Member	61	64%	5	16%	11	79%	77	55%
Non-Member	34	36%	27	84%	3	21%	64	45%
Total	95	100%	32	100%	14	100%	141	100%

Of the smaller districts (fewer than 3,000 ADA), 69% (49 of 71) are members of TSSS, but only 37% (28 of 70) of the larger districts are members of TSSS. Of the

22 smaller districts that are not members of TSSS, 16 are city districts. TSSS member districts, it may be said, have one or more of the following characteristics: they are rural*, small, and have available fewer total local current revenues per pupil.

The Trial Begins

On October 21, 1988, a motion for summary judgement was filed by the defendants claiming that "there are no genuine issues of material fact relevant to the issues raised by the plaintiffs and defendants are entitled to summary judgement as a matter of law." The motion was denied by the court. Trial on the issues began on October 29, 1990, and testimony was completed on December 6, 1990. Declaratory judgment was handed down by the trial court in **Tennessee Small School Systems v. McWherter** (1988) holding that Tennessee school funding was not *uniform*, and was, therefore, in violation of the 'equal protection' provisions in the Tennessee constitution. On September 13, 1991, an order was issued calling on the Legislature to meet its constitutional obligation by reforming school finance, and setting a deadline of June 30, 1992. Appeal was filed by the state in November of 1991 with the Court of Appeals although TSSS has petitioned

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* The definition of "rural" seems to be much more difficult than one might expect. An ERIC Rural Education Digest (ERIC, 1988) lists more than a dozen possible definitions without finding one that is widely accepted. The Federal Government uses Metropolitan and Nonmetropolitan as its method of differentiation, as does Brown (1989), a demographer at Cornell University. The National Center for Education Statistics formerly provided indicators for rural education in its annual The Condition of Education (Ogle & Alsalam, 1990), but discontinued the practice in 1988. We have taken the common-sense approach to defining rural by accepting the self-definition of the Tennessee Small School Districts as the standard.

the Supreme Court to take the case directly. Hearings have not been scheduled nor has the order of the chancery court as yet been stayed pending the outcome of the appeal.

The Tennessee Small School Systems (TSSS) Decision.

Memorandum

The action was brought by an unincorporated association of school districts, including some of the poorest districts in the state in terms of fiscal capacity. The relief sought was for the court to declare that Tennessee's present system of funding public K - 12 education is unconstitutional and in violation of the equal protection and education clauses of the state constitution. The defendant was the state as represented by Governor Ned Ray McWherter. The court also allowed several of the larger, more affluent school districts to intervene and join the defendants. The intervening school districts were fearful that the small school districts would find funding through the reallocation of existing school funds by reducing their share (**TSSS v. McWherter**, p. 1).

The Tennessee School System

The historical development of the law of educational funding occupies a large proportion of the court's opinion. In 1835 the Tennessee constitution was amended to include this language (with the court's emphasis added):

> Knowledge, learning and virtue, **being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the state,** being highly conducive to the promotion of this end, it shall be the duty of the General Assembly in all future periods of this government, to cherish literature and science; and the fund called **common school fund**, and all the lands and proceeds thereof, dividends, stocks, and other property of every description whatever, heretofore by law

> **appropriated by the General Assembly** of this state for the use of the common schools, and all such as shall hereinafter be appropriated, shall remain **a perpetual fund**, the principal of which shall never be diminished by legislative appropriation; and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools throughout the state, **and for the equal benefit of all the people thereof**; and no law shall be made authorizing said fund or any part thereof to be divested to any other use than the support and encouragement of common schools. **(Article XI, Section 10 of the 1835 Constitution)**

This provision which was retained in the Reconstruction constitution after the Civil War, contains a very strong commitment to common schools, and establishes a permanent trust fund to conduct schools for "the equal benefit of all." In 1873 the legislature enacted Tennessee's first comprehensive general education act called "An Act to Establish and Maintain a **Uniform** System of Public Schools." This legislation makes the first appearance of the word "uniform" in Tennessee school law. Subsequently the Tennessee Supreme Court had a number of occasions to review the 1873 Act, and in each instance emphasized that the Act created a "uniform" system of public schools. (A list of all cases cited by the court is included as Appendix C.)

In 1925 the legislature enacted Chapter 115 of the Public Acts of 1925, which created the current system of public education. Now substantially codified as Tennessee Code Annotated §49-1-101, Chapter 115 was introduced by a preamble that sets out the Act's purpose "to establish and maintain a **uniform** system of public education." In the later codification the preamble was omitted, so that the word "uniform" does not appear in recent compilations of Tennessee school legislation. Cases decided by the Tennessee Supreme Court subsequent to the 1925 revision of the school laws continue to emphasize, however, that Tennessee law mandates a uniform system of public education.

In 1977 a limited constitutional convention was called, primarily for the purpose of eliminating poll tax and segregation provisions from the Tennessee constitution. The convention approved a completely rewritten Education Clause which read:

> The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such postsecondary educational institutions, including public institutions of higher learning, as it determines. **(Article XI, Section 12 of the 1978 Constitution)**

The constitution as amended in convention was approved in an election in 1978 and was proclaimed by the governor in that year. Notice that the Education Clause as rewritten does not use the word "uniform" anywhere, and appears to make a much weaker commitment to public school education. In support of their argument that no constitutional issue was raised by alleged inequities in school funding, and that state school funding is wholly a legislative matter, and is not justiciable, the defendants in this case cited the omission of the word "uniform" from both the statute and the constitution, and the low level of commitment to public education represented by the constitutional language (**TSSS v. McWherter**, pp. 1 - 6).

The Funding System

The court next turned its attention to the sources of school funding in Tennessee, noting that the proportions contributed were federal (10%), state (45%), and local (45%), and that about 60% of the state contribution is from the Tennessee Foundation Program (TFP), with the balance of state funding in the form of

categorical grants. The court then noted that categorical grants were not equalized, and that under the TFP equalization formula, "the amount available for equalization is less than $60 million out of an expenditure of $2.5 Billion." The court concludes that, "state funds provide little real equalization." After a similar review of local funding, the court concluded that, "[t]here is no provision for any equalization of local option sales taxes between counties" (**TSSS v. McWherter**, pp. 6 - 8).

Finding of Facts

The court found that:

> The statutory funding scheme has produced a great disparity in the revenues available in the different school districts. . . . Because of lack of fiscal capacity, there is little the poor school districts can do to offset the differences. . . .
>
> School districts with more sales and with higher property values and commercial development have more funds to educate their children. The wide disparity is related to differences in fiscal capacity . . . and not necessarily from inadequate local effort. . . .
>
> Specifically, the evidence shows that students in the plaintiffs schools are not afforded substantially equal access to adequate laboratory facilities, computers, current and new textbooks, adequate buildings, advance placement courses, varied curriculum, advanced foreign language courses, music and art courses, [and] drama and television courses. Plaintiff's districts also fail in their efforts to retain teachers, fund needed administrators, and provide sufficient physical education and other

programs. . . .

The evidence indicates a direct correlation between dollars expended and the quality of education a student receives. In the ten richest districts for the school year 1988-89 60% of the elementary schools and 77% of the secondary schools were accredited [by the Southern Association of Colleges and Schools] compared to 7% and 40% among the ten poorest districts. . . . Some of the poorer districts cannot even comply with the state's 'minimum standards' because of inadequate funding.

Graduates from accredited high schools have better success in college acceptances. Students in plaintiff's districts are more likely to attend unaccredited schools. Children in the poorer districts suffer from poor standardized test results, and have a higher need for remedial courses at college resulting in poorer chances for higher education (**TSSS v. McWherter**, pp. 8 - 11).

Conclusions of Law

Does the current state funding method satisfy the requirements of the education and equal protection clauses of the Tennessee constitution? (**TSSS v. McWherter**, p. 11)

Equal Protection under the Law

Since the right to a free public education has been "explicitly or **implicitly**" [emphasis added by author] guaranteed by the Tennessee constitution since 1835, the primary responsibility for maintenance and support of the system is on the state.

Taken together, Article I, Section 8, and Article XI, Section 8 of the Tennessee constitution impose the identical equal protection as does the fourteenth Amendment of the U. S. Constitution.

> That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land. (**Article I, Section 8 of the 1978 Constitution**)
>
> The legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities, or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law. No corporation shall be created or its powers increased or diminished by special laws but the General Assembly shall provide by general laws for the organization of all corporations, hereafter created, which laws may, at any time, be altered or repealed, and no such alteration or repeal shall interfere with or divest rights which have become vested. (**Article XI, Section 8 of the 1978 Constitution**)

The method chosen by the state to maintain and support the system of free public education is subject, therefore, to equal protection examination.

Recognizing that there are three possible methods of equal protection analysis -- the rational basis test, the balancing of interests test, and strict scrutiny -- the court decided that education was a "fundamental right" under the Tennessee constitution, and chose, therefore, strict scrutiny. Under strict scrutiny all persons are entitled to be treated the same by the state under like circumstances and conditions, and to justify interference with a fundamental right the state must show that the interference is premised on a "compelling state interest."

> Education is the single most important function of our state government. It is at the very foundation of democracy . . .
>
> In order to compete in modern society, to hold a job and participate in our economic and political system, a citizen must have an adequate basic education. An education is fundamental to enjoyment of a full right of citizenship. . . .
>
> The distinctive function of public education in our society coupled with the express guarantee in the Tennessee Constitution of a free public education compels this court to treat it as a fundamental right. . . . Under a uniform system, a child living in a poor district should have the same opportunity to receive substantially the same education as a child living in a rich district. If the quality of education that the state provides must be related to wealth at all, it can only be related to the wealth of the state as a whole.
>
> The evidence in this case reveals an impermissible disparity among the counties of this state in the quality of education it provides its young citizens. The defendants offer no compelling reason for impinging upon this fundamental right. The court concludes that the present public education funding system fails to satisfy the equal protection requirements of the Tennessee Constitution.

The court concluded that because the intervening large urban districts also had needs that were unmet by the state funding system, that their interests were really the same as the small school systems. The court, therefore, dismissed the intervenor's claims (**TSSS v. McWherter**, pp. 11 - 15).

Final Judgment

Although the plaintiffs were asked to draw up proposed remedies to be heard at a second hearing, the court subsequently declined to order any specific remedy. Citing the principles of separation of powers, the court declined to interfere in the legislative process.

> It is the duty of the General Assembly to provide for a system of public education. The Court must assume that the legislature, as a constitutional body, will comply with a judgment and perform its constitutional duties.
>
> The Task will not be easy, and will require much time and study. For that reason the Order will be stayed until June 30, 1992 (**TSSS v. McWherter, Final Judgment**, pp. 1 - 2).

The Appeal

After the court's decision was handed down in September, the state filed an appeal in November in the Court of Appeals for Middle Tennessee. The main point of the state's appeal continued to be the justiciability of the issue of state funding in the light of constitutional and statutory language that did not seem to impose a rigorous duty upon the state.

TSSS has petitioned the Tennessee Supreme Court to take the case directly. The Supreme Court has not yet responded, and the appeal would appear to be going forward in the Circuit Court. Hearings have not been scheduled, however, nor has the order of the chancery court as yet been stayed pending the outcome of the appeal.

Analysis of the Case

Since it now seems to be well established to classify funding cases by "waves" (Levine, 1991; Thro, 1990), the Tennessee case clearly falls into the category of "third wave" cases -- those cases decided, generally, in 1989 and after, in which courts that earlier might have conservatively deferred to the legislative authority have become much more open to challenges to state funding systems based on state constitutional education clause language that imposes stringent responsibilities on the legislature. In most third-wave cases the "equal protection" argument is not emphasized, but in the Tennessee case the uniformity implicit in the education clause, and the equal protection argument (Underwood, 1989) are of roughly equal weight in the court's decision.

The Tennessee case is -- to pursue subcategories of legal challenge -- one that relies on an obligation to provide a "uniform" system of public education (McUsic, 1991) for citizens of the state as the basis for equal protection litigation. What is unique about the Tennessee case is that the obligation to provide a uniform system does not lie in constitutional mandate or in statutory imperatives, but in judicial doctrine. Whether this approach can succeed is the point of the appeal.

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Appendices

A. Brief of **TSSS v. McWherter**

B. The Tennessee Small School Systems -- List of Members

C. List of Cases cited by the Court in **TSSS v. McWherter**

Tennessee Small School Systems v. McWherter
Chancery Court, 20th Judicial District, Davidson County, Part II
Case No. 88-1812-II

The Case was filed July 8, 1988, by seventy-seven (77) small school districts, against the State of Tennessee collectively seeking declaratory judgment that state K-12 school funding is inequitable under the Education and Equal Protection clauses of the State Constitution. Large school districts were allowed to intervene and join the defense. On July 25, 1991, decision was rendered for the plaintiffs, and after a second hearing an order was filed on September 13, 1991.

The Facts: Education was first authorized in Tennessee's revised constitution of 1835, and retained in the revised constitution of 1870 after the Civil War. The first public school act passed in 1873 established a "uniform" state-wide system of public education. In cases interpreting the 1873 school law as well as its successor passed in 1925, Tennessee courts have ruled consistently that the word "uniform" means that students are to receive the same scope and quality of education regardless of whether they attend school in small, poor, or rural districts, or in large, affluent, or urban districts. School legislation currently in the Tennessee Code is based on the 1925 Act.

At the time this lawsuit was filed Tennessee public schools received funds primarily from three sources; the federal government through categorical grants (10%), state government through the Tennessee Foundation Program (TFP) and categorical grants (45%), and local government primarily from local property and sales taxes (45%). TFP and local sales and property taxes are distributed to school districts on the basis of Average Daily Attendance (ADA) in the district. Because efforts to "equalize" TFP distributions to school districts have had small impact, and other revenues are not equalized at all, wide disparities in per-pupil funding exist between school districts with large or affluent tax bases and those with small or unaffluent ones.

Legal Question(s):

1. Under the constitution and laws of the state of Tennessee:
   - A. Does the constitution's Education clause create a right to a public education?
   - B. Is the promised education to be available to all and equal for each?
   - C. Do the 1978 constitutional changes, particularly omission of the word "uniform" from the Education clause, change the nature of the right extended to pupils?
2. Does that right to a public education, if it exists, rise to a level such that denial of it is a denial of the "equal protection of the law" as promised by the Tennessee constitution?
   - A. Does the existing funding program create a "suspect classification" or "impact a fundamental right" requiring the Court to use "Strict Scrutiny"?
   - B. Under Strict Scrutiny is state funding justified by a "compelling state interest"?
3. Is the denial of equal protection, if any, "caused" by funding disparities?
4. Are disparities correctable locally, or must funding be "equalized" at the state level?

Ruling(s):

1. A. Yes.
   B. Yes. That is what the word "uniform" means. Tennessee courts have ruled consistently that schools should be equal regardless of location or situation.
   C. No. The changes' meaning is unclear, but need not be resolved here. Since the implementing legislation has not changed, the school system must remain uniform.
2. A. Yes. Education in Tennessee is a fundamental right, denial of which is a violation of the equal protection clauses.
   B. No. No compelling state interest in the current state funding structure was shown.
3. Yes. Disparities in funding result in correlative disparities in local school offerings.
4. At the state level. Disparities are such that they cannot be corrected by local effort.

Decision: For the plaintiff Small School Systems. Intervenors' claims are dismissed. The Legislature must provide for a constitutional system of public education prior to June 30, 1992.

Appendix B

The Tennessee Small School Systems (TSSS)

List of Members

Alamo City	Bedford County	Bells City
Benton County	Bledsoe County	Bradford SSD
Cannon County	Carter County	Cheatham County
Chester County	Claiborne County	Clay County
Cocke County	Crockett County	Cumberland County
Decatur County	Dekalb County	Dyer County
Fayette County	Franklin County	Fentress County
Gibson SSD	Giles County	Grainger County
Grundy County	Hancock County	Hardin County
Hawkins County	Henderson County	Henry County
Hickman County	Hollow Rock-Bruceton SSD	Houston County
Humboldt City	Humphreys County	Huntingdon SSD
Jackson County	Jefferson County	Johnson County
Lake County	Lauderdale County	Lawrence County
Lewis County	Lincoln County	Macon County
Marion County	Marshall County	McKenzie SSD
McNairy County	Meigs County	Milan SSD
Monroe County	Moore County	Morgan County
Obion County	Oneida SSD	Overton County
Paris SSD	Pickett County	Polk County
Rhea County	Rogersville City	Sequatchie County
Smith County	South Carroll SSD	Stewart County
Sweetwater City	Tipton County	Trenton SSD
Trousdale County	Unicoi County	Union County
Van Buren County	Wayne County	Weakley County
West Carroll SSD	White County	

Appendix C

Tennessee Small School Systems v. McWherter
Chancery Court, 20th Judicial District, Davidson County, Part II
Case No. 88-1812-II

Cases cited in the Opinion

Abington School District v. Schempp, 374 U.S. 203 (1963).

Board of Education of Memphis City Schools v. Shelby County, 292 S.W. 462 (Tenn. 1927).

Board of Education of Memphis City Schools v. Shelby County, 339 S.W.2d 569 (Tenn. 1960).

Brown v. Board of Education, 347 U.S. 483 (1954).

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City of Knoxville v. State, 133 S.W.2d 465 (Tenn. 1939).

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Leeper v. State, 53 S.W. 962 (Tenn. 1899).

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Getting even: The perils of ignoring inflation in school funding

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Abstract

The 1977 Tennessee Foundation Program (TFP) funding formula attempts to equalize educational expenditures across districts. Traditional concepts of equalization are present: programs are weighted, and the state provides a major share (92.5%) of the cost. The Tennessee School Finance Equity Study (1979) judged that the TFP had, in fact, the potential to adequately fund basic educational costs. In 1979, the Tennessee School Finance Equity Study determined that the actual base amount required during 1977-1978 to meet the educational needs of the average fourth grade classroom was $832 per pupil. The TFP per-pupil base established by the legislature for that year was $318.

According to Honeyman, Thompson, and Wood, "[T]he first step in the solution to the issues confronting rural education is for states to *fund fully the formulas and programs already in existence.*" To explore whether the Tennessee legislature has or has not done this during the implementation of the Tennessee Foundation Program, the Consumer Price Index (CPI) and the Education Price Index (SPI) have been employed. Applying these standard measures to the actual 1977-1978 base level of funding to calculate funding levels forward to 1990 consistent with inflation gives these results:

	1977-78	1978-79	1989-90
TFP Base Amount Appropriated	$ 318	$ 342	$ 569.76
TFP Base Calculated using the CPI		$ 348	$ 645
TFP Base Calculated using the SPI		$ 346	$ 727

The Tennessee School Finance Equity Study (1979) found that although the TFP attempted to better equalize funding for all districts, as implemented it did not equalize funding very well. This remains true. The 1979 study made a series of recommendations to improve equalization, *but none of the recommendations have been implemented to date*. In March, 1992, Governor Ned McWherter signed into law a new Basic Education Program that addresses some of the past inequities.

Getting even: The perils of ignoring inflation in school funding

Thinking about funding for Tennessee's public schools we were led to ask ourselves the question, "Would the disparities and the lawsuit have occurred if, in 1978 when they adopted the Tennessee Foundation Program, the Legislature had funded the program at the level that their own research showed to be appropriate, and if they had increased funding over the ensuing years consistent with inflation?" Looking at the legislation just enacted, we are asking ourselves, "Is history about to repeat itself?"

Reform of School Funding in Tennessee

The Tennessee Foundation Program (TFP) of 1977

A major change in the educational funding formula occurred in 1977, when the new "Tennessee Foundation Program" (TFP) was established in which a pupil-based, program-oriented cost differential procedure for measuring needs and costs in state funding of the K-12 public schools replaced the former, largely teacher unit procedure.

The TFP Formula. The funding formula for Tennessee schools since 1978 has been a minimum foundation program determined by using the full time equivalent (FTE) of average daily attendance (ADA) that is weighted (W) for various programs of regular and vocational students (WFTEADA), with a special education supplement based on the previous year's identified and served (I & S) students. The **base amount** per student has been set annually by the State Board of Education using this formula:

Base = SA / (TE(RV + IS)), where:

SA = state appropriations for education

TE = the state's teacher training and experience factor

RV = the sum of the WFTEADA of regular and vocational programs

IS = the identified and served special education students

Programs and cost differentials for each program in regular, vocational, and special education were established yearly by the State Board of Education relative to the base amount (TCA §49-3-306) which has been the critical variable. The base amount used in the TFP formula in 1991-92 is $569.76. Although most programs and cost differentials have not changed substantially since 1978, additional special education programs with high cost differentials have been added.

Determination of Local Education Agency Need. TFP funds for each local district have been calculated by multiplying the FTEADA for each program by its corresponding cost differential to obtain a WFTEADA. The sum of WFTEADA students was then multiplied by the base. The result (WFTEADA multiplied by the base) was then multiplied by the district's teacher training and experience factor to arrive at the total local Tennessee Foundation Program "need." The state TFP program then funded 92.5 % of this need. The local district teacher training and experience factor, determined by dividing the district's average teacher salary by the state salary schedule for a teacher with a bachelor's degree and no experience, compensates districts for employing, and provides some incentive to hire, more qualified teachers.

The Tennessee School Finance Equity Study (1979), an in-depth two-year analysis of the TFP, the state tax system, and equity issues, staffed and funded through the State Department of Education, found that although the 1978 foundation program attempted to better equalize funding for all districts, the TFP as implemented did not equalize funding very well. The 1978 funding formula attempted to equalize educational expenditures across districts. Traditional concepts of equalization were present: programs were weighted, and the state provided a major share of the cost. The Tennessee School Finance Equity Study (1979) judged that the TFP had, in fact, the potential to adequately fund basic educational costs. The amount of money appropriated by the General Assembly was the key, however, to increasing the base amount in the TFP, and the legislature made no attempt to arrive at this appropriation based on actual educational need. The Tennessee School Finance Equity Study (1979) made a series of recommendations to improve equalization, *but none of the recommendations were implemented through June 30, 1990.*

Inadequate Appropriations Undermined the Tennessee Foundation Program. The overarching problem with the base amount of the TFP was that it was too low. In 1979, the Tennessee School Finance Equity Study determined that the amount required to meet the educational needs of the average fourth grade classroom based on the 1977-78 fiscal year was $832 per pupil. The TFP per pupil base for the 1977-78 school year was, under the old formula, $318, and in 1978-79, under the new TFP formula was $342. In 1989-90, the most recent data available, the base of $569.76 would still have to be increased by about 46% to rise to the $832 needed a decade ago in 1977-78, and costs have escalated greatly since then.

According to Honeyman, Thompson, and Wood, (1989, p. 71), "[T]he first step in the solution to the issues confronting rural education is for states to *fund fully the formulas and programs already in existence."* The Tennessee legislature did not do this during the implementation of the TFP.

Inadequate State Funding Magnifies the Inequities of Local Funding. Each year after the 1978-79 funding formula was put into place, the total expenditures for education were well above the funds provided by the TFP, supplemented mostly by local sources. Per pupil sales tax bases in fiscal 1987-1988, the latest year available, ranged from a county high of $68,064 in Davidson County to a county low of $4,288 in Clay County. The mean per pupil sales tax base was $26,413, and only ten of the total 95 counties were above the mean (Green & Gregory, 1990, Table A 7, p. 36). These ten counties are all either populous, or have a large commercial base or both. This high level of unequalized local leeway results in great disparities among taxing districts.

Failing to Keep Up with Inflation -- The Inflation Indexes. To answer the "What if?" questions to be raised, the Consumer Price Index (CPI) maintained by the U. S. Department of Labor, and the School Price Index (SPI) updated annually by Research Associates of Washington were considered. The Consumer Price Index concentrates on the costs of personal and household care experienced by most people in the regular course of living. The School Price Index is based on school budget surveys to determine how anticipated expenditures are allocated, and on standard price surveys to determine the current cost of the items upon which money is typically spent by schools. For a more detailed explanation of the make-up of the School Price Index see **Inflation Measures for Colleges and**

Schools, 1991 Update (1991). The two indexes for the period of the TFP, 1978-79 through 1989-90, are presented in Appendix A. Notice that the inflation in the general economy flattened out during the 1980s more than the School Price Index did. The rise in the SPI is driven, particularly, by two elements -- professional salaries and benefits, and library materials. Because the SPI is focused on the specific type and mix of educational costs, it will be relied upon for the analyses that follow.

What If The TFP Base Rate had Been Kept Even with Inflation? The Actual 1977-78 base amount provided by the legislature in fiscal 1977-78 was $318 per WFTEADA, and the actual base provided in 1978-79 was $342. What if the base amount beginning after the 1977-78 fiscal year had been kept current with the rate of inflation in the general economy, and in the cost of conducting K - 12 schools? In Appendix B we have indexed the $318 actual base amount by inflation and projected the base amount through fiscal 1989-90. The base computed for 1989-90 indexed to inflation using the SPI ($726.58) is substantially higher (27.5%) than the actual base of $569.76, but still 14.5% short of the 1977-78 identified need ($832), and certainly short by much more of the 1977-78 need projected for 1989-90 using the SPI ($1,900.98).

What if the Actual 1977-78 Need had been kept up with inflation? The research project conducted by the Tennessee School Finance Equity Study (1979) for the 1977-78 school year revealed that the actual base need for local school districts was at the level of $832 per WFTEADA. As pointed out elsewhere, this level of need is well above the actual base in 1977-78, and in 1989-90. Suppose the legislature had funded the 1977-78 base at the level of need, and then kept it

current with inflation? Appendix C indexes the $832 need base amount by inflation and projects the base through fiscal 1989-90. If the legislature had behaved according to the principles implied in the TFP, that education would be funded at need level, the 1989-90 base would have grown to $1,900.98, or more than three times the actual 1989-90 base.

What If the Total TFP Appropriation had Been Kept Even with Inflation? Actual total state Tennessee Foundation Program (TFP) revenues for the period of the TFP are presented in Appendix D in the context of their relation to the total state funding contribution.

If a base of $569.76 (actual, 1989-90) generated $ 833,832,832 in TFP contribution to the state portion of total school revenue, how much would the projected SPI inflated base have generated? Other things being equal, the TFP contribution would have been $1,063,335,894 (($726.58 X $833,832,832) / $569.76), or $229,508,062 more than the amount actually generated, and an amount about equal to the estimated revenue from a half-cent state sales tax increase. Suppose the base had been $832 (the 1977-78 need) in 1989-90? Then the TFP contribution, other things being equal, would have been $1,217,616,042 (($832 X $833,832,832) / $569.76), or $383,783,210 more than the actual TFP contribution. Discussion in the recent legislative debate was that $569,000,000 was needed beyond the TFP actual total generated by the TFP base of $569.76, which hasn't changed in three years. What would the base have to have been in 1989-90 in order for the TFP total contribution to the total school funding to be $1,402,832,832 ($833,832,832 + 569,000,000)? This computation suggests that a base of only $958.56 (($ 569.76 X $1,402,832,832) / $833,832,832) would have generated the extra TFP contribution

needed. The figure of $958.56 is only slightly above the SPI inflated $726.58, and about half the $1,900.98 that would have resulted if the $832 had been inflated over the years. All of this is, of course, speculation, and other things are never equal, but it would certainly have been less painful for the legislature to increase the base by $388.80 ($958.56 - $569.76) over the eleven years between 1978-79 and 1989-90, than it will be for them to increase the base by that amount between now and June 30, 1993, when the emergency funding for the BEP runs out.

The Education Improvement Act (EIA) of 1992

Even before the school funding lawsuit, **Tennessee Small School Systems v. McWherter**, was filed, state officials and legislators knew that the low level of education funding was damaging Tennessee's schools, and the rural schools more than the urban schools. There was talk about correcting the situation, but something else was always more pressing, until the small schools, more in desperation than in anger, filed suit. The legislature was then willing to listen to a proposal from the new governor, but the problem had been left to grow so long that its solution required much more than an adjustment, it required, apparently, a revolution. The governor's plan called for a reduction in reliance on the state sales tax, and the inauguration of a new state income tax. The legislature rejected the income tax and education reform in its 1991 session. The governor called a special session of the legislature on January 14, 1992, to deal only with education, but once again the legislature rejected the income tax and the governor's new education program. In the regular legislative session that followed on the heels of the special session, and which is still in progress, the legislature has once again rejected the income tax, but they have accepted the

revised education funding plan known as the Basic Education Program (BEP), and incorporated it in a broader piece of educational reform legislation called the Education Improvement Act. The governor signed the bill on March 11, 1992, making it law.

Non-Financial Reform in the EIA. The Education Improvement Act addresses much more than funding, and represents true reform in K - 12 education in Tennessee. These are the important non-financial features of the act:

1. **Structural changes at the state level include:**
   A. The powers and duties of the State Board of Education are more explicitly laid out, and a BEP review committee is established.
   B. The Commissioner of Education is directed to establish a centralized Management Information System into which local education agencies are required to provide data that the Commissioner specifies. The Commissioner will implement standards of fiscal accountability, educational improvement, and levels of attendance/drop-out rate acceptability, and LEAs will be measured against those standards. Districts found not in compliance with these standards may be placed on probation, and if after two years the deficiencies are not corrected, the State Board of Education may remove the superintendent and/or the members of the local board of education. The effect of educational improvement is to be measurable using a value-added assessment approach, and the goal of educational improvement is to achieve a rate of improvement that exceeds the gain in national norms.
   C. The Commissioner must issue an annual report by October 1 of each year giving the results of these measures of performance against standards, among other things.
   D. The act establishes an Office of Educational Accountability in the State Comptroller's Office which will also monitor the performance of school boards, superintendents, school districts, schools, and school personnel, as measured against the standards of the State Board of Education and the provisions of the EIA. The Office of Educational Accountability will have access to the Management Information System, and may require the provision of other information from the education system, and may conduct any studies, analyses, or audits necessary to evaluate the performance and progress of education in the state. The Office may act on its own volition, or upon request of the governor or the General Assembly, but in any event will publish its own annual report.

E. The State Board of Education will provide mandatory guidelines to LEAs for evaluation of certificated personnel. These evaluation guidelines will incorporate measures of the individual's effect on the value-added improvement in student performance.
F. The law clears the way legally to allow multi-county school districts, and allows for county "unification educational planning commissions" to prepare consolidation plans. State planning assistance, including funds, may be available to such commissions, and there is a state funding supplement available as an incentive during the first five years of such consolidations.

2. **Structural changes at the local level include:**
A. Currently in Tennessee superintendents may achieve office by three routes; by popular election, by appointment by the county legislative body, or by appointment by the local board of education. This act phases out the first two of these options, so that after 1996 all superintendents will be appointed by their board of education, and will be more directly accountable than has been the case before.
B. The act fairly thoroughly disconnects local boards of education from county government, and the word "county" is eliminated from the names of boards of education and from the titles of superintendents.
C. The relationship of the local board with the superintendent is Streamlined allowing the superintendent much greater freedom to employ and assign personnel.
D. The superintendent's relationship with principals is also streamlined allowing principals much greater freedom in assigning job duties to school personnel, and in coordinating school-based-decision-making.
E. The act specifically commits the state to school based decision making (SBDM) allowing local boards to implement alternative education programs, and empowering the state Commissioner to waive state rules and regulations upon application by the local superintendent or principal. A planning fund is available with up to $50,000 possible to aid the local effort. The act also encourages the development of "break-the-mold" schools, anticipating federal funding for such schools.
F. Principals will receive performance contracts, and their term of office may not exceed that of their superintendent. A new credential specifically for the principalship will be developed by the State Board of Education, and all principals employed in the 1993-94 school year must be so certificated.
G. The act requires all boards of education to be popularly elected, and prescribes training for members of local boards of education.
H. The act authorizes the establishment of Family Resource Centers in or near schools, and provides for staffing, parent advisory councils, and cooperation with community agencies. Up to $50,000 is available from the Commissioner of Education for planning and implementing pilot Family Resource Centers.

3. **School Curriculum and Program are altered as follows:**
A. Kindergarten is required for all public school children in Tennessee.
B. Ungraded or unstructured K - 3 classes will be permitted without impairing the LEAs participation in the BEP
C. An annotated bibliography of written, AV, and other materials and activities about the contribution of African-Americans to Tennessee and the world is to be developed, the State Board of Education will include multi-cultural diversity in curriculum to be taught in grades K - 12, and the Commissioner of Education is to develop a system to monitor compliance with these imperatives.
D. Four years after the BEP is fully funded the Commissioner of Education and the State Board of Education will cease approving class-size waivers.
E. Alternative schools for students who have been suspended or expelled will now be required in every district for grades 7 - 12, and allowed for grades 1 - 6. No student may graduate based solely on attendance at alternative schools.
F. Looking toward the twenty-first century, the act specifies that the Commissioner of Education must develop and the State Board of Education approve a two track high school curriculum, one for college bound and one for students entering the job market.
G. The act provides for a certificate of attendance as distinguished from a full diploma. Graduating high school students are required to take the Tennessee Comprehensive Assessment Program (TCAP) test, and, beginning in the 1993-94 school year, may receive the full diploma only if their score equals or exceeds the level specified by the State Board of Education. Every student who wishes to receive a full high school diploma after September 1, 1994, must also have received one full year of computer instruction.
H. A need-based financial aid incentive program is created by the act that promises, "if a child meets the grade and ACT standard and stays out of trouble, his or her college tuition will be paid."

4. **New Policies on student attendance and transfers include:**
A. Compulsory attendance in Tennessee is extended to children from kindergarten through age 17, except for students engaged in approved home schooling, students who have already graduated, or students under age eighteen (18) who are enrolled in an approved GED program and making satisfactory progress.
B. From two weeks before the opening of school in the fall through the school year, students may transfer from the school into which they are zoned to another school provided that both the sending and the receiving LEAs approve. If students apply for transfer earlier than two weeks prior to opening, only the approval of the receiving LEA is necessary. State funds follow the transferring student into the new school system. Students who transfer may have to pay tuition, and may have to provide their own transportation. These rules may not be used to defeat desegregation orders.

Financial Reform in the EIA – the Tennessee Basic Education Program.

The Education Improvement Act provides for a number of significant changes in the state funding system. The exact finance provisions of the EIA are given in Appendix E, and are summarized here:

1. **The BEP proper includes these provisions:**
   A. The State Board of Education already has the power and duty to make policy and recommend funding to the governor and legislature. Adjustments to their process are contained in the act in a new section called the "Tennessee Basic Education Program." Career Ladder will not be funded under the BEP, but capital outlay and pupil transportation, both formerly separate categories, will be. Rather than using ADA as the TFP did, the BEP will use weighted prior-year Average Daily Membership (ADM) in its need formula. Special education needs will continue to be based on the prior year's students identified and served (I & S).
   B. There is established within the general fund of every LEA a new account called the "Dedicated Education Fund." Appropriations from all sources will go into this fund and be invested as provided by law. Fund balances may be carried forward, and surpluses in excess of 3 % of budgeted annual operating expenses may be appropriated for nonrecurring purposes.
   C. LEAs must maintain eligibility to receive BEP funding by adhering to the rules, regulations and minimum standards set by the state Board of Education, otherwise the Commissioner of Education may withhold part or all of the BEP funding until the deficiency is rectified.
   D. BEP funds are to be distributed on a schedule agreed to by the Commissioners of Education and of Finance and Administration.
   E. Funds designated the "classroom component" must be spent in the classroom.
   F. Allowing for changes in enrollment, no LEA will receive less funding under the BEP than it did under the TFP in the 1990-91 school year.
   G. BEP funds may be withheld by the Commissioner of Education awaiting the filing of required records and reports by LEAs.
   H. In the event that state revenues are insufficient to fully fund LEA entitlements, the Commissioner will pro rate the distribution to LEAs, and with State Board of Education approval, may waive state rules, regulations or requirements until the short-fall is made up.
   I. Pupil transportation funding is made a part of BEP funding. LEAs are encouraged to purchase vehicles and other transportation equipment and supplies through the state Department of General Services.

J. School expenditures are divided into two components, classroom expenditures and nonclassroom expenditures. The BEP will fund 75 % of the classroom component and 50 % of the nonclassroom component. LEAs must fund the balance for each component, and the funds must be appropriated before the fall term may commence. From the local portion of such revenues, there will be a distribution of funds for equalization purposes pursuant to a formula adopted by the State Board of Education as approved by the Commissioners of Education and Finance and Administration.

K. There is established by the act the Education Trust Fund of 1992. The Commissioner of Finance and Administration is authorized and directed to deposit to this fund all revenues earmarked and allocated specifically and exclusively for educational purposes. Unexpended balances in this fund will not revert to the general fund, but will be carried forward until expended for educational purposes. Within the Education Trust Fund will be an account called the Basic Education Program Account. Funds in the account are to be invested with the income being returned to the account. Funds in the BEP account will be disbursed by the Commissioner of Education.

L. The BEP includes funding of $200 per teacher in grades K - 12, to be used for educational supplies, $100 by the individual teacher, and $100 by the teachers in any school working as a group.

M. Each LEA will receive $2.00 per ADM to fund the provision of duty-free lunch periods for teachers.

N. The BEP will fund one school nurse for every 3,000 students.

O. A performance incentive bonus program, to reward those schools that exceed the Commissioner of Education's performance standards, is to be developed and funded from appropriations above and beyond the BEP beginning in 1994-95.

P. The K-3 At-Risk class size program will be funded by the BEP.

Q. In counties with more than one school district, BEP funds for the county superintendent are to be pro rated among the districts on the basis of ADM.

2. **In Addition to the BEP, the EIA also provides that:**

A. Local boards are authorized to participate in bond funding under the Tennessee State School Bond Authority Act.

B. Fees, such as course supplies, activity fees, summer school fees, and graduation fees, will be waived for students receiving free or reduced price lunches.

C. Special education costs will be capped for LEAs with the excess funded by the state.

D. Beyond equalization based on fiscal capacity, it is the legislative intent that BEP distributions be indexed to the relative cost-of-living in various parts of Tennessee. The State Board of Education, the Department of Education, and the Commissioner of Finance and Administration are directed to investigate this possibility, and report to the Select Oversight Committee on Education before June 30, 1993.

Funding the EIA -- Senate Bill No. 777. The Education Improvement Act passed by the General Assembly was accompanied by a piece of tax legislation that provided some, but not all of the revenue required to fund the BEP. This act, Senate Bill No. 777, signed by the governor on March 4, 1992, was a general tax bill, but included provisions directly related to the BEP. The exact school finance provisions of Senate Bill 777 given in Appendix F, are summarized here:

1. Effective April 1, 1992, the sales tax now levied by and collected for the state at the rate of 5.5 % will be increased to 6 %.

2. The sales tax levied and collected by the state for the counties and municipalities at a rate of up to 2.75 % based on local option, is held at that rate, and not increased.

3. Revenues generated by the 0.5 % increase in the state sales tax rate during the period of April 1, 1992, and June 30, 1992, will be divided into two equal parts:
   A. The first half to be distributed on a per pupil basis to LEAs to fund nonrecurring educational expenses such as textbooks, supplies and equipment.
   B. The second half to be distributed to LEAs for general education purposes as allocated by an appropriations act [the TFP].

4. All revenues generated by the 0.5 % increase in state sales taxes after June 30, 1992, through June 30, 1993, will go into the state general fund earmarked solely for K - 12 educational use.

5. The tax provision creating the 0.5 % increase in state sales taxes expires June 30, 1993.

The Basic Education Program (BEP) Formula. The BEP is a minimum foundation program which uses minimum staffing ratios based on average daily membership (ADM) in regular and vocational programs in the previous year, and the number of identified and served (I & S) special education students from the previous year. BEP "need" has two parts, a classroom (or pupil contact) component, and a nonclassroom component. The classroom component will be

funded 75 % by the state and 25 % by the local districts. The classroom component need formula relies upon extensive inquiry into staffing ratios -- some taken from the minimum requirements of the Southern Association of Colleges and Schools, and other staffing ratios determined by the funding committee of the State Board of Education -- to establish costs, but not to determine local staffing.

Determination of Local Education Agency Need. The formula for the classroom component is otherwise similar to the TFP formula. BEP funds for each local district will be calculated by multiplying the FTEADM for each program by its corresponding cost differential to obtain a WFTEADM, then the sum of WFTEADM students will be multiplied by the base. The result (WFTEADM multiplied by the base) will then be multiplied by the district's teacher training and experience factor to arrive at the total local Basis Education Program "need." The critical factor continues to be the legislative appropriation that goes to set the value of the base amount.

The nonclassroom component will be funded 50 % by the state and 50 % by the local education agency, and will include central office functions, plant operation and maintenance, pupil transportation and capital outlay.

Analysis of Changes Resulting from the BEP

The BEP is arguably a direct response to the TSSS lawsuit. Regardless of the motivation behind the development of the BEP, however, the fact that the BEP progressed in tandem with the lawsuit will save valuable time in establishing the new finance scheme. Even if the defendants win on appeal, considering that the State Board is acting upon its responsibilities to "adopt policies, formulas, and

guidelines for the fair and equitable distribution and use of public funds among public schools and for the funding of all requirements of state laws, rules, regulations and other required expenses, and to regulate expenditures of state appropriations for public education, grades kindergarten (K) through twelve (12)." (TCA §49-1-302(a)(4), as revised in the EIA), reform has already occurred, and probably will not be reversed.

The establishment of the Dedicated Education Fund at the local level and the Basic Education Program Account within the new Education Trust Fund of 1992 at the state level, actually looks like an effort to restore the perpetual common school fund that was formerly in the Tennessee constitution, and is at the center of the **TSSS v. McWherter** law suit.

Innovations in the financial portion of the EIA includes a change in the formula from ADA in the current year to ADM from the prior year. Appendix G shows that the actual ADA and ADM enrollment, which declined for the years under analysis, tracked each other fairly closely. The advantage of ADM over ADA is, presumably, one of administrative convenience, rather than any inherent superiority of ADM.

The TFP formula did not include pupil transportation or capital outlay, which were separately funded as categorical expenditures. In Appendix D the figures show that prior to 1984 categorical appropriations were at a relatively low level. In 1984 the legislature passed the Comprehensive Education Reform Act of 1984 (CERA), and increased categorical spending in conjunction with that reform. The decision to move categorical expenditures under the formula is a decision to move away from politics and toward rational methods.

Most important, for districts that are taxing themselves at capacity, the BEP includes an index of fiscal capacity that will be used by the state to calculate an amount the state will contribute toward the local district's 25 % (Classroom component) and 50 % (nonclassroom component) contributions. This indexing by fiscal capacity introduces true equalization into the formula. The act anticipates a counter-equalization factor in the form of cost-of-living indexing of distributions, yet to be developed, which will favor urban districts. For districts that fear equalization may actually reduce their state allocation, the EIA guarantees state funding will not go below the TFP funding provided in the 1990-91 school year.

The main thrust of the non-financial portion of the Education Improvement Act is to increase accountability to the state by shortening and tightening channels of communication, by increasing professionalization of school administrators, by rationalizing the administrative process including state-of-the-art management information, by increasing oversight, and by giving the Commissioner the coercive tools necessary to assure compliance.

Will Inadequate Initial Funding Undermine the BEP? Recent calculations by the State Department of Education indicate that an increase in appropriation of $569 million over current levels of funding are required to fully fund the BEP. The legislature debated funding only in terms of increased sales taxes, finally enacting a half-cent increase. Figures introduced into the legislative debate and circulating in the media indicate that a half-cent increase will increase state revenues by $230 million, but state school funding for 1991-92 has been cut by $116 million because of low state revenues attributed to the recession, so that the increased tax revenues are to be used first to restore the current year short-fall

using the TFP formula, leaving only $114 million of new money to be distributed under the BEP formula. To fund only $114 million of a $569 million need is to fall well short of full funding.

Will History Repeat Itself? -- The Funding Crisis of 1992. Built into the legislature's approval of the BEP is a commitment to raise funding up to a level where it will truly support basic education. The half cent increase in state sales taxes, which expires at June 30, 1993, clearly has not done this. Raising taxes has been a struggle for the Tennessee legislature, and it will not get easier in future years, so there is reason for concern that the legislature will under-appropriate for the BEP as they did for the TFP. Funding all of Tennessee's needs, and there are pressing needs in places other than education, will almost certainly require tax reform, and the generation of substantially higher state revenues. It is not yet time to relax.

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Appendices

A. The Consumer Price Index (CPI) and the School Price Index (SPI), 1978-79 Through 1989-90.

B. The 1977-78 Actual Base Amount ($318) Computed from 1978-79 Through 1989-90 Indexed to the CPI and the SPI.

C. The 1977-78 "Need" Base Amount ($832) Computed from 1978-79 Through 1989-90 Indexed to the CPI and the SPI.

D. State of Tennessee: Analysis of the State Contribution to the Total Revenue for K - 12 Public Education, 1978-79 Through 1989-90.

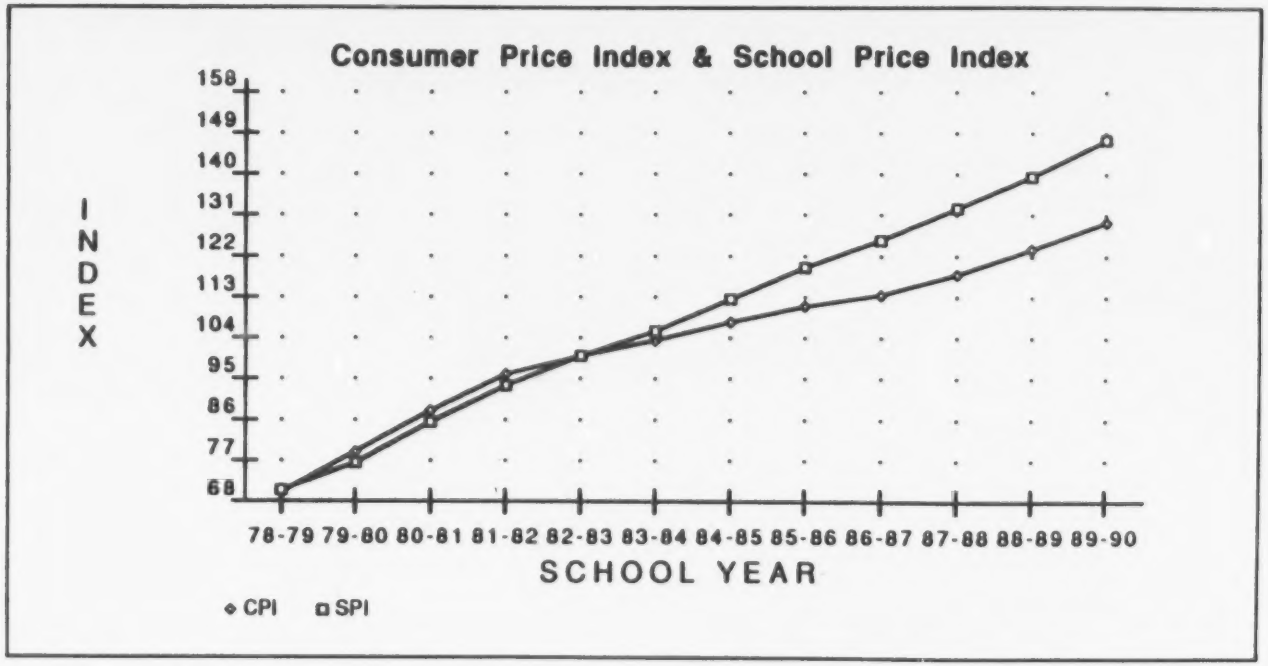
E. Provisions of the Education Improvement Act of 1992 Relating to Education Finance.

F. Provisions of Senate Bill 777 Relating to Education Finance

G. Average Daily Attendance (ADA) and Average Daily Membership (ADM) in Tennessee Public Schools, 1978-79 Through 1989-90.

Appendix A

The Consumer Price Index (CPI) and the School Price Index (SPI), 1978-79 through 1989-90



	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90
CPI	69.8	79.1	88.2	95.8	100	103.7	107.7	110.8	113.3	118.0	123.5	129.4
SPI	70.3	78.5	85.7	93.7	100	105.6	112.6	119.6	125.7	132.7	139.7	147.6

Source: Research Associates of Washington. (1991 Update).

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Appendix B

The 1977-78 Actual Base Amount ($318) Computed from 1978-79 through 1989-90 Indexed to the CPI and the SPI.

1977-78 Actual Base = $318, 1978-79 = $342

	78-79	79-80	80-81	81-82	82-83	83-84	84-85	85-86	86-87	87-88	88-89	89-90
CPI X Actual Base	347.91	394.26	439.62	477.50	498.43	516.87	536.81	552.26	564.72	588.15	615.56	644.97
SPI X Actual Base	346.06	376.58	421.87	461.25	492.26	519.83	554.28	588.74	618.77	653.23	687.69	726.58

Appendix C

The 1977-78 "Need" Base Amount ($832) Computed from 1978-79 through 1989-90 Indexed to the CPI and the SPI.

1977-78 Need Base = $832

	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90
CPI x Need Base	910.24	1031.52	1150.19	1249.30	1304.08	1352.33	1404.49	1444.92	1477.52	1538.81	1610.53	1687.47
SPI x Need Base	905.41	985.26	1103.75	1206.79	1287.93	1360.05	1450.20	1540.36	1618.92	1709.08	1799.23	1900.98

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Appendix D.

State of Tennessee: Analysis of the State Contribution to the Total Revenue for K-12 Public Education, 1978-79 through 1989-90.

	1978-79	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90
TN Foundation (TFP)	413,791,872	469,609,081	486,871,244	504,645,429	533,678,879	535,207,096	602,899,522	636,633,260	691,633,089	723,430,362	782,324,874	833,832,832
Categorical Appropriation for:												
Capital Outlay	20,444,067	18,842,536	15,821,554	20,155,718	12,330,868	11,872,180	14,111,888	16,143,412	13,022,434	12,213,921	11,843,353	11,778,277
Transportation	16,585,825	16,521,847	16,568,472	16,572,702	16,530,982	16,585,081	20,618,983	23,241,490	20,851,880	20,697,485	20,768,817	20,899,102
Other	46,808,990	38,469,285	32,092,340	29,529,030	33,287,726	32,716,615	98,167,250	133,465,238	193,157,427	237,355,225	251,883,914	271,252,624
Subtotal	83,757,882	76,773,768	66,482,366	66,257,450	64,149,587	63,173,876	133,898,121	172,850,141	227,031,760	270,466,631	286,496,084	303,930,003
Total	497,458,864	537,491,849	553,353,610	572,902,879	597,828,466	598,380,972	736,598,643	809,483,401	918,664,849	993,897,013	1,078,820,958	1,137,762,835
TN Foundation (TFP)	83.16%	85.71%	87.99%	88.09%	89.27%	89.44%	81.82%	78.65%	75.29%	72.79%	73.44%	73.29%
Categorical Appropriation for												
Capital Outlay	4.11%	3.51%	2.86%	3.52%	2.06%	1.98%	1.92%	1.99%	1.42%	1.23%	1.10%	1.04%
Transportation	3.32%	3.45%	3.36%	3.24%	3.10%	3.11%	2.80%	2.87%	2.27%	2.10%	1.93%	1.84%
Other	9.41%	7.33%	5.80%	5.15%	5.57%	5.47%	13.46%	16.49%	21.03%	23.88%	23.53%	23.84%
Subtotal	16.84%	14.29%	12.01%	11.91%	10.73%	10.56%	18.18%	21.35%	24.71%	27.21%	26.56%	26.71%
Total	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

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Appendix E

Tennessee Code Annotated

EDUCATION IMPROVEMENT ACT OF 1992
PUBLIC CHAPTER 575

This act is the **Education Improvement Act**, and may be cited as such. **[EIA § 1]**

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable. **[EIA, Section 89]**

This act shall take effect on July 1, 1992, except that any superintendent elected by the people or appointed by the local governing body and in office as of September 1, 1992, shall be allowed to complete the term to which he or she was elected or appointed, and Sections 6 through 26 are suspended until such time as the superintendent is appointed by the local board of education. **[EIA, Section 90]**

This act shall not be applied so as to penalize any school system on the grounds that it is performing above the base requirements established by the State Board of Education for the approval of schools. **[EIA, Section 62]**

Title 8: Public Officers and Employees
Chapter 27: Group Insurance for Public Officers and Employees.
Part 3: Group Insurance for Local Education Employees.

§ 8-27-303 Payment of costs – Participation in plans.

Tennessee Code Annotated, Section 8-27-303(a)(1)(A), is amended by adding the following sentence: " Effective July 1, 1992, each local education agency shall provide for any increased amounts needed for its eligible employees and their dependents, above the amount funded by the state for FY 1991-92, from funds appropriated for the Basic Education Program." **[EIA, Section 44]**

Chapter 37: Retirement--Financing and Funds.
Part 4: State Contributions.

§ 8-37-402 Appropriation of required funds

Tennessee Code Annotated, Section 8-37-402(a)(2), is amended by adding the following sentence: "Effective July 1, 1992, each local education agency shall provide for any increased amounts needed for its teachers, above the amount funded by the state for FY 1991-92, from funds appropriated for the Basic Education Program." **[EIA, Section 45]**

Chapter 38: Social Security.

§ 8-38-116 Appropriations for contributions and administrative costs.

Tennessee Code Annotated, Section 8-38-116, is amended by adding the following sentence: "Effective July 1, 1992, each local education agency shall provide for any increased amounts needed for its teachers, above the amount funded by the state for FY 1991-92, from funds appropriated for the Basic Education Program." **[EIA, Section 46]**

Title 49: Education
Chapter 1: State Administration
Part 2: Department of Education

§ 49-1-201 Powers and Duties of the Commissioner

Tennessee Code Annotated is amended by adding the following new section to Title 49, Chapter 1, Part 2:

§ 49-1-2__(a) The Commissioner of Education is authorized to prescribe a management information system through which local school systems maintain, record, and report information to the department and information for internal school and system management. Such system shall be established by the Commissioner in accordance with the standards and policies and procedures established by the Information System Council.

(b)(1) The Commissioner of Education shall recommend standards of fiscal accountability and soundness for local school systems to the State Board of Education and the state board shall promulgate rules based on those standards to be used in evaluating the fiscal operations of local school systems.
[EIA, Section 4]

(a) There is hereby established within the office of the comptroller an office of education accountability which shall monitor the performance of school boards, superintendents, school districts, schools, and school personnel in accordance with the performance standards set out in this act or by regulations of the State Board of Education.

(b) The office of education accountability shall be provided with information generated through the management information system provided for in Section 4 of this act, information gathered for the annual report provided for in Section 5 of this act, or any other information which it may require.

(c) The office of education accountability shall conduct such studies, analyses, or audits as it may determine to be necessary to evaluate education performance and progress, or as may be assigned to it by the governor or general assembly.

(d) The office of education accountability shall report its findings annually to the governor and the general assembly. **[EIA, Section 47]**

Chapter 1: State Administration
Part 3: State Board of Education

Tennessee Code Annotated, Section 49-1-302(a), is amended by deleting subdivision (4) and substituting instead the following:

(4) Develop and adopt policies, formulas, and guidelines for the fair and equitable distribution and use of public funds among public schools and for the funding of all requirements of state laws, rules, regulations, and other required expenses, and to regulate expenditures of state appropriations for public education, grades kindergarten (K) through twelve (12). Such policies, formulas and guidelines may be changed as necessary, but not more often than once per appropriation period, and shall not be considered rules subject to promulgation under the Administrative Procedure Act, Title 4, Chapter 5. Such policies, formulas and guidelines as are adopted by the board shall consider and include provisions for current operation and maintenance, textbooks, school food services, pupil transportation, vocational and technical education, number of programs of pupils served, measurable pupil improvement, reduction of pupil dropouts, teacher training, experience and certification, pupil-teacher ratio, substitute teacher reimbursement, requirements prescribed by state laws, rules, regulations or other required costs, and inflation; and may include other elements deemed by the board to be necessary. The board shall establish a review committee for the Tennessee Basic Education Program. The committee shall include the commissioners of education and finance and administration, or their designees. Others may be appointed by the board as determined by the board. Any changes in the Basic Education Program components of the formula as approved by the board for the 1992-93 fiscal year must first be approved by the commissioners of education and finance and administration. **[EIA, Section 2]**

The State Board of Education is directed to establish a limit on local costs on special education and provide for state assumption of costs in excess of this limit. **[EIA, Section 57]**

Chapter 3: Finances
Part 3: Tennessee Education Finance Act of 1977

§ 49-3-306 Tennessee Foundation Program – Computation – Pay Supplement

Tennessee Code Annotated, Section 49-3-306(5)(A)(v), is amended by adding the following sentence at the end: "Unless such funds are specifically appropriated for salary increases, no LEA shall increase salaries of existing personnel by using state funds appropriated for public education that have been allocated for new or additional positions." **[EIA, Section 84]**

§ 49-3-331 Tennessee Basic Education Program

Tennessee Code Annotated, Title 49, Chapter 3, Part 3, is amended by adding the following new sections:

§ 49-3-331 (a) State funds appropriated for the Basic Education Program (BEP), grades kindergarten (K) through twelve (12), shall be allocated pursuant to the formula devised by the State Board of Education pursuant to Section 49-1-302. The programs funded through this formula are the "Tennessee Basic Education Program".

The formula shall also include increased funding for inclusion of a capital outlay component and cost of operations adjustments. This requirement shall be implemented the first year of the Basic Education Program.

The Tennessee Basic Education Program shall include requirements prescribed by state law, regulations, rules, and other required costs.

Before any subsequent amendment or revision to the components of the formula of the Tennessee Basic Education Program shall become effective, it shall be submitted to the House and Senate education committees for review and recommendation and shall be approved by resolutions of the Senate and House of Representatives, but such approval shall be on the complete plan or revision and shall not be subject to amendment of the plan or revision

(b) Notwithstanding any other law to the contrary, except for direct appropriations in support of the Career Ladder Program, Chapter 5, Part 50, of this title, the only procedure for the funding of the Basic Education Program grades kindergarten (K) through twelve (12) shall be as provided in the formula prescribed in this section, and to the extent that funds are appropriated for such purpose by the General Assembly.

(c) All funds generated for the Basic Education Program shall be spent on Basic Education Program components provided, however, that those funds that cannot be spent prior to the beginning of the 1994-95 school year shall be available for distribution to local school systems for the purpose of classroom construction and/or twenty-first century classroom technology to meet the maximum class size requirements of this title.

(d) Notwithstanding any other section or law to the contrary, the Basic Education Program of every local education agency will be calculated on the basis of prior year average daily membership (ADM) or full-time equivalent average daily membership (FTEADM) or identified and served special education (I&S), as appropriate, unless the LEA's current year ADM, FTEADM, or I&S changes from the prior year by more than two (2) percent, in which case, the current year ADM, FTEADM, or I&S will be used.

§ 49-3-332 [Deleted]

§ 49-3-333 (a) There is hereby established within the general fund of each local education agency a special revenue account to be known as the "Dedicated Education Fund".

All appropriations from all sources to fund public education will be deposited in this account. Money in the Dedicated Education Fund shall be invested as provided by law.

(b) Any fund balance remaining unexpended at the end of a fiscal year in the general fund of the local public education system shall be carried forward into the subsequent fiscal year. Such fund balance shall be available to offset shortfalls of budgeted revenues or, subject to the provisions of Section 49-2-301(f)(23), shall be available to meet unforeseen increases in operating expenses. The accumulated fund balance in excess of three (3) percent of the budgeted annual operating expenses for the current fiscal year may be budgeted and expended for nonrecurring purposes but shall not be used to satisfy appropriation requirements for recurring annual operating expenses.

§ 49-3-334 (a) In order for any local public school system to receive Tennessee Basic Education Program funds, such system shall meet the conditions and requirements set out in this section. In order to enforce the same, the Commissioner of Education may in his discretion withhold a portion or all of the Tennessee Basic Education Program funds that the system is otherwise eligible to receive.

(b) Every local public school system shall meet the requirements of state law as to the operation of such system and of the rules, regulations, and minimum standards of the State Board of Education for the operation of schools.

§ 49-3-335 (a) Tennessee Basic Education funds shall be distributed by the Commissioner of Education periodically throughout the school year according to a schedule established by the Commissioner of Education and the Commissioner of Finance and Administration, subject to all restrictions prescribed by law.

Basic Education Program funds that are earned in classroom components, which include pupil contact and classroom support as defined by the State Board of Education, must be spent in the classroom.

(b) Tennessee Foundation Program appropriations to local education agencies for the 1990-91 school year shall be a base, and no local education agency shall receive in subsequent years from the Basic Education Program a lesser amount of funds, adjusted for changes in student enrollment, than it received in the 1990-91 school year under the Tennessee Foundation Program.

(c) Before a full and complete settlement is made with any system for any year, all records and reports required by the Commissioner shall be filed with him by the system.

(d) If state funds available for distribution are insufficient to meet the local public school systems' entitlements, the Commissioner shall apply a pro rata reduction to the amount for which each system is eligible. The pro rata shall be applied to the state increased amount needed to fully fund the Basic Education Program compared to the base year.

If such action is necessary, the Commissioner of Education, with the approval of the State Board of Education, may waive any requirements prescribed by law, rule, regulation or otherwise until the state provides the required funding.

§ 49-3-336 (a) Pupil transportation services shall be as defined by the Commissioner of Education and approved by the State Board of Education. State funds for pupil transportation shall be appropriated as determined by the formula established by the Commissioner and distributed through the Tennessee Basic Education Program.

(b) The formula should encourage the most efficient usage of transportation services by local boards of education.

(c) Wherever possible, the aggregate purchasing power of local education agencies should be consolidated, and transportation equipment and supplies purchased through statewide contracts issued by the Department of General Services.

§ 49-3-337 The State shall provide seventy-five (75) percent of the funds generated by the Tennessee Basic Education Program formula in the classroom components and fifty (50) percent in the nonclassroom components as defined by the State Board of Education. Every local government shall appropriate funds sufficient to fund the local share of the Basic Education Program. No LEA shall commence the fall term until its share of the Basic Education Program has been included in the budget approved by the local legislative body, From the local portion of such revenues, there shall be a distribution of funds for equalization purposes pursuant to a formula adopted by the State Board of Education as approved by the Commissioners of Education and Finance and Administration. It is the intent of the General Assembly to provide funding on a fair and equitable basis by recognizing the differences in the ability of local jurisdictions to raise local revenues.

§ 49-3-338 There is hereby created the Education Trust Fund of 1992. The Commissioner of Finance and Administration is authorized and directed to deposit to this fund all revenues earmarked and allocated specifically and exclusively for educational purposes under this act, Tennessee Code Annotated, Section 67-6-103, 67-4-1025, 57-4-306, and any other statute providing for the collection of state taxes allocated for educational purposes. All expenditures from

this fund shall only be made upon appropriations for educational purposes duly enacted by the General Assembly. Educational purposes shall include, but not be limited to, payment of principal and interest on general obligation bonds authorized to fund capital projects for institutions of higher education. Any unemcumbered finds and any unexpended balances of the fund remaining at the end of any fiscal year shall not revert to the general fund of the state but shall be carried forward until expended for educational purposes pursuant to appropriations duly enacted by the General Assembly.

(a) There is hereby established within the Education Trust Fund of 1992 created by this act, a special revenue account to be known as the Basic Education Program Account.

(b) All appropriations from the Education Trust Fund of 1992 and each other appropriation as may be provided by law, will be credited to the Basic Education Program Account. Such appropriations will be credited to the account on the fifteenth day of the second month of each quarter or on such other schedule approved by the Commissioner of Education and the Commissioner of Finance and Administration.

(c) The principal and interest of the Basic Education Program Account, and any part thereof, will be subject to payment under the provisions of this chapter. The Commissioner of Education shall administer the Basic Education Program Account and is authorized to make disbursements from the account in accordance with the provisions of Tennessee Code Annotated, Sect 9-4-601.

(d) Money in the Basic Education Program Account shall be invested by the State Treasurer for the benefit of the account pursuant to Section 9-4-603. Interest accruing on investments and deposits to the account shall be returned to the account and become part of the account.

(e) Any unemcumbered funds or any unexpended balance of the Basic Education Program Account remaining at the end of any fiscal year shall not revert to the general fund of the state or the Education Trust Fund of 1992, but shall be carried forward until expended in accordance with the provisions of this chapter.

(f) All state funds available to any local education agency that exceed the amount of state funds provided for public education in each respective local education agency in the 1991-92 fiscal year, shall be exempt from the trustee's commission authorized by Section 8-11-110.

§ 49-3-339 (a) There is included in the Tennessee Basic Education Program an amount of money sufficient to pay two hundred dollars ($200.00) for every teacher in grades kindergarten through twelve (K-12). This money shall be used by the said teachers for instructional supplies. One hundred dollars ($100.00) shall be spent for such purpose as determined by each such teacher. The second one hundred dollars ($100.00) shall be pooled with all such teachers in a school and spent as determined by a committee of such teachers for such purpose. The purpose of this pool is to permit purchase of items or equipment that may exceed an individual teacher's allocation, for the benefit of all such teachers at the school and the enhancement of the instructional program, and shall not be used for basic building needs such as HVAC, carpets, furniture, items or equipment for the teacher's lounge, or the like.

(b) Each local education agency shall be entitled to receive funding of no less than two dollars ($2.00) per ADM in grades K-12 to be used for the purpose of providing a duty-free lunch period for each teacher.

(c) (1) There is included in the Tennessee Basic Education Program an amount of money sufficient to fund one (1) full-time, public school nurse position for each three thousand (3,000) students or one (1) full-time position for each local education agency, whichever is greater. A local education agency may use such funds to directly employ a public school nurse or to contract with the with the Tennessee public school nurse program, created by Section 68-1-1201(a), for provision of school health services.

(2) Each public school nurse employed by or provided to a local education agency, pursuant to subsection (a) of this section, shall meet or exceed the minimum qualifications and standards established pursuant to 68-1-1204(a), and shall perform the duties and responsibilities enumerated within Section 68-1-1202.

(d) The amounts provided in this section may be reduced pro rata by the Commissioner of Education during any year in which the Basic Education Program appropriation is insufficient to fund the program fully.

§ 49-3-340 There shall be an amount of money above and beyond the Tennessee Basic Education Program to be used as incentive funding to reward those schools that exceed the performance standards recommended by the Commissioner and set by the State Board of Education. The amount of the individual incentive grant for each school shall be set by the Commissioner of Education. The grants shall be contingent on the Commissioner's development of an appropriate data management system but shall not be available before the 1994-95 school year.

§ 49-3-341 The State Board of Education and the State Department of Education are directed to implement the K-3 At-Risk class size program in accordance with policies developed by the Department of Education and approved by the State Board of Education.

§ 49-3-342 Any funds allocated under the Basic Education Program for compensation of a superintendent in a county shall be divided among all local education agencies in that county on the basis of average daily membership. **[EIA, Section 3]**

During the 1992-93 fiscal year, the Commissioner of Finance and Administration, the State Department of Education and the State Board of Education shall conduct a study to determine the extent to which the cost of living in each county in the State of Tennessee varies from the statewide average. This study may incorporate any available statistics developed by the government of the United States of America or any local or private studies deemed useful or relevant. The study shall assign to each county in the State of Tennessee a numerical ratio which the cost of living in that county bears to the statewide average cost of living. The results of this study shall be presented to the Select Oversight Committee on Education prior to the end of the 1992-93 fiscal year. It is the intent of the General Assembly that the Basic Education Program (BEP) formula be adjusted pursuant to the findings of this study. **[EIA, Section 61]**

Chapter 3: Finances
Part 12: Tennessee State Bond Authority Act

Tennessee Code Annotated Title 49, Chapter 3, Part 12, is amended by adding the following new section:

§ 49-3-1210 Any local board of education shall, by motion duly adopted, be authorized to participate in bond funds issued by the authority; provided, however, that such participation shall be pursuant to policies adopted by the authority and subject to all restrictions imposed by the authority. **[EIA, Section 36]**

(a) Local education agencies shall establish, pursuant to rules promulgated by the State Board of Education, a process by which to waive all school fees for students who receive free or reduced price school lunches.

(b) "School Fees" are defined as:

(1) Fees for activities that occur during regular school hours;

(2) Fees for activities and supplies required to participate in all courses offered for credit or grade;

(3) Fees or tuition applicable to courses taken during the summer by a student ; except that non-resident students regularly enrolled in another school system may be required to pay fees or tuition for such summer courses.

(4) Fees required for graduation ceremonies. **[EIA, Section 55]**

Appendix F

Senate Bill No. 777

[Those Sections of the Act Relating to the Funding of Public Education]

AN ACT Relative to taxes; to increase the rate of certain taxes; to extend the state tax to certain services and privileges; to prohibit the application of certain local option taxes to these services and privileges; and to amend Tennessee Code Annotated,Title 67, Chapters 2 and 4, and Secions 67-6-102, and 67-6-702.

If any provision of this act or the application thereof to any person or circumtance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable. [Section 19]

This act shall take effect April 1, 1992, the public welfare requiring it and Sections 1 - 5 shall be repealed and shall be null and void on June 30, 1993. [Section 20]

Title 67: Taxes and Licenses
Chapter 6: Sales and Use Taxes
Part 1: General Provisions

§ 67-6-103 Deposit and allocation of receipts.-Transportation equity fund.

(a) All revenues generated from the increase in the sales tax rate from April 1, 1992, through June 30, 1992, shall be deposited in the state general fund and earmarked and allocated as follows, notwithstanding the provisions of Tennessee Code Annotated, Section 67-6-103, to the contrary:

(1) Fifty percent (50 %) distributed to the local education agencies on a per pupil basis. All of such funds shall be expended for nonrecurring items, including but not limited to textbooks, supplies and equipment. No funds earmarked and allocated pursuant to this subdivision shall be used for salary increases or supplements.

(2) Fifty percent (50 %) for general education purposes as allocated by an appropriations act.

(b) All revenue generated from the increase in the sales tax rate pursuant to sections 1 - 5 after June 30, 1992, shall be deposited in the state general fund and earmarked for education purposes in grades K - 12, notwithstanding the provisions of Tennessee Code Annotated, Section 67-6-103, to the contrary. [Section 9]

Title 67: Taxes and Licenses
Chapter 6: Sales and Use Taxes
Part 2: Taxes Imposed

§ 67-6-202 Property sold at retail–Food

Tennessee code Annotated, Section 67-6-202 is amended by deleting the words and number "five and one-half percent (5.5 %)" and substituting instead the words and number ""six percent (6 %)". [Section 1]

§ 67-6-203 Property used, consumed, distributed, or stored

Tennessee code Annotated, Section 67-6-203 is amended by deleting the words and number "five and one-half percent (5.5 %)" and substituting instead the words and number ""six percent (6 %)". [Section 2]

§ 67-6-204 Lease or rental of property

Tennessee code Annotated, Section 67-6-204 is amended by deleting the words and number "five and one-half percent (5.5 %)" and substituting instead the words and number ""six percent (6 %)". [Section 3]

§ 67-6-205 Services

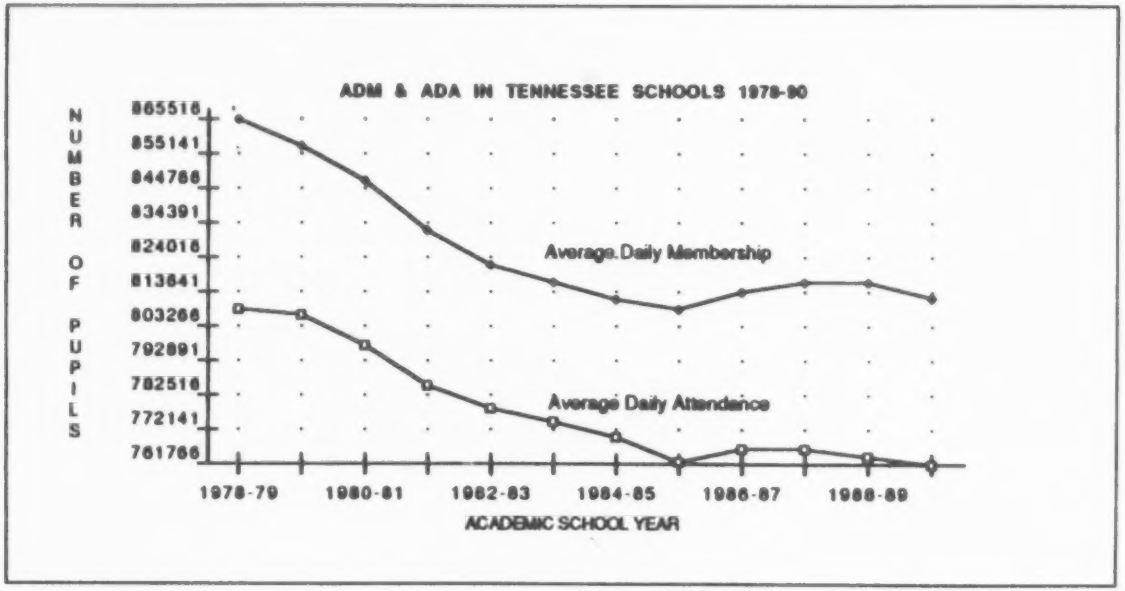
Tennessee code Annotated, Section 67-6-205 is amended by deleting the words and number "five and one-half percent (5.5 %)" and substituting instead the words and number ""six percent (6 %)". [Section 4]

§ 67-6-221 Interstate Telecommunications Services

Tennessee code Annotated, Section 67-6-221 is amended by deleting the words and number "five and one-half percent (5.5 %)" and substituting instead the words and number ""six percent (6 %)". [Section 5]

Appendix G.

Average Daily Attendance (ADA) and Average Daily Membership (ADM) for K-12 in Tennessee Schools 1978 - 90.



	78-79	79-80	80-81	81-82	82-83	83-84	84-85	85-86	86-87	87-88	88-89	89-90
A D M	865,509	857,373	846,922	831,854	821,719	816,668	811,232	808,303	813,576	816,678	816,507	812,020
A D A	808,512	806,696	797,237	785,336	778,321	774,346	769,862	762,225	766,521	766,651	764,354	761,766
% Difference	6.59%	5.91%	5.87%	5.59%	5.28%	5.18%	5.10%	5.70%	5.78%	6.13%	6.39%	6.19%

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Marilyn A. Hirth, Ed.D.

- Bachelors Degree (Elementary and Special Education) 1980 Lambuth College (Jackson, TN).
  Masters Degree (Special Education and Rehabilitation) 1983 Memphis State University.
  Doctorate (Educational Administration and Supervision) 1988 Memphis State University.

- Ass[illegible] Professor, Department of Educational Administration and Supervision 1990 ---

  •Teaches: School Finance/Business Management
  Introduction to Educational Administration
  Supervisory Process in an Educational Environment
  Human School and Community Relations.
  Principalship in Special Education (SDE Grant)

  •Conducts research through the Center for Research in Educational Policy (School Finance Focus group).

  •Implementing Distance Learning Project using compressed interactive video.

  •Conducts research in School Law and Special Education Law.

•Was Director of Special Education for Haywood County (TN) Board of Education from 1984-90.
•Special Education Resource Teacher at Haywood High School from 1983-84.
•Taught Comprehensive Development Class at Haywood High School from 1980-83.

•Has authored or co-authored fifteen (15) published articles on Special Education, Education Finance, and Human Resources in Education.

•Has presented papers on School Finance and Special Education at national conferences.

•Is a member of:
Phi Delta Kappa (PDK), American Education Finance Association (AEFA), Association for Supervision and Curriculum Development (ASCD), National Organization of Legal Problems in Education (NOLPE), Council of Exception Children (CEC), National Council of Professors of Educational Administration (NCPEA), National Organization of Legal Problems in Education (NOLPE), Mid-South Educational Research Association (MSERA), Tennessee Association for Supervision and Curriculum Development (TASCD), and Tennessee Association of Administrators of Special Education (TAASE).

Theodore J. Meyers

Was born and raised in Des Moines, Iowa, and has his undergraduate degree from Iowa State University (1966), an MBA from Utah State University (1970), an MA from Teachers College, Columbia University in Higher Education Administration (1983), and an EdD from Memphis State University in Educational Administration (1987).

Since graduation from Memphis State, Meyers has taught there on an adjunct basis, meeting classes in Education Law, Administrative Theory, Policy Applications in Education, Personnel and Negotiations, and Leadership. As both graduate student and faculty member, Meyers has participated in research in school finance, the educational needs of principals, and the structure of Educational Administration preparation programs.

Meyers has spent twenty years working on the business side of higher education, having been chief business officer at Regis College in Denver, the University of Dubuque in Dubuque, Iowa, and Urbana College in Urbana, Ohio.

As co-author, Meyers name has appeared on four published articles. He is a member of the American Education Finance Association (AEFA), the American Association for Higher Education (AAHA), and the American Association of University Professors (AAUP).

Thomas C. Valesky
Short Biographical Sketch

Ed. D.	Educational Administration and Supervision Minor: Business Management Memphis State University, Memphis TN, 1984
M.A.	Counseling and Guidance University of Alabama, Tuscaloosa AL, 1973
B.A.	Psychology Minor: English Clemson University, Clemson SC, 1971

• Currently serving as Interim Chair and Associate Professor in the Department of Educational Administration and Supervision.

• Currently Senior Researcher for the Center for Research in Educational Policy, focusing on School Based Decision Making.

• Previously served in a number of administrative positions including Elementary Principal and Superintendent.

• Previously worked as a teacher, counselor, and subsequently administrator in a **special education school** (Ridgecrest Childrens' Center) in Tuscaloosa, Alabama.

• Has authored or co-authored 30 articles, 1 book, and 20 papers since entering the professoriate in 1984.

Gail Forsythe

• Bachelors Degree (Secondary Education - Social Studies)	1974	UT - Martin (Martin, TN)
Masters Degree (Secondary Guidance and Personnel Services)	1976	Memphis State University
Working toward Doctorate (Educ. Admin. & Supervision)	1992	Memphis State University

• Graduate Research Assistant, Department of Educational Administration and Supervision 1990 ---
  •Research in School Based Decision Making, School Finance Equity, and Leadership.

•Taught for 16 years in McNairy County Schools.
  •Held numerous offices in state and local TEA-NEA.

•Is serving 2nd term as a County Commissioner, 6th District, McNairy County, Tennessee.
  Recently appointed to Legislative Committee of Tennessee County Commissioners Association.

•Served as congressional intern in Washington Office for Congressman Don Sundquist (R-Tennessee) Summer 1983.
  •Worked on Human Services and Education Issues.

•Is a member of:
  Phi Delta Kappa (PDK), Delta Kappa Gamma (DKG), American Education Finance Association (AEFA), Tennessee County Commissioners Association (TCCA), and Rotary Club.

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